ANNUAL INDEX - DIGEST

DECISIONS AND OPINIONS

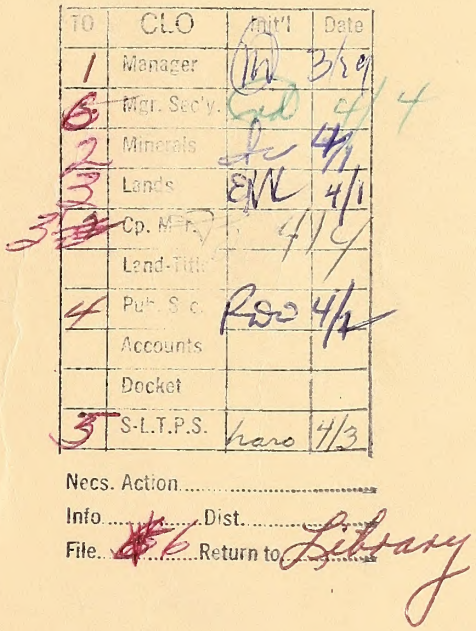
of the

UNITED STATES DEPARTMENT OF THE INTERIOR

and

CUMULATIVE INDEX TO SUITS FOR JUDICIAL REVIEW OF DEPARTMENTAL DECISIONS BOTH PUBLISHED AND UNPUBLISHED

WASHINGTON 25, D. C.



JANUARY-DECEMBER 1962

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UNITED STATES DEPARTMENT OF THE INTERIOR
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Frank J. Barry, Solicitor

ANNUAL INDEX-DIGEST
JANUARY-DECEMBER 1962

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1962. It supersedes the index-digest for January-September 1962.

Decisions and opinions cited as appearing in 69 I. D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Other decisions and opinions are unpublished and copies may be obtained from the Office of the Solicitor.

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Leslie N. Baker, A-28454 (October 26, 1960)

Autrice Copeland Freeman v. Stewart L. Udall, Civil No. 1578 Tucson, in the United States District Court for the District of Arizona. Suit pending.

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Max Barash v. Douglas McKay, Civil Action No. 939-56. Judgment for defendant, June 13, 1957; reversed and remanded, 256 F. 2d 714 (1958); judgment for plaintiff, December 18, 1958, U.S. Dist. Ct. D.C., 66 I.D. 11 (1959).

Barnard-Curtiss Co., 64 I.D. 312 (1957)
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Barnard-Curtiss Co. v. United States, Court of Claims No. 491-59. Judgment for plaintiff, April 4, 1962 (opinion).

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Sam Bergesen v. United States, Civil No. 2044, in the United States District Court for the Western Division of Washington. Complaint dismissed, March 11, 1958. No appeal.

F. W. C. Boesche, A-27997 (August 5, 1959)

Fenelon Boesche v. Fred A. Seaton, Civil Action No. 2463-59. Judgment for defendant, November 23, 1960 (opinion). Affirmed, 303 F. 2d 204 (1961). Cert. granted, 371 U.S. 886 (1962).

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Brookhaven Oil Company v. Fred A. Seaton, Civil Action No. 2120-57. Judgment for plaintiff, October 1, 1958. No appeal.

Melvin A. Brown, 69 I.D. 131 (1962)

Melvin A. Brown v. Stewart L. Udall, Civil Action No. 3352-62. Suit pending.

Bushman Construction Co., IBCA-103 (March 29, 1957)

Bushman Construction Co. v. United States, Court of Claims No. 437-57. Petition dismissed, July 16, 1958 (opinion).

The California Company, 66 I.D. 54 (1959)

The California Company v. Stewart L. Udall, Civil Action No. 980-59. Judgment for defendant, October 24, 1960 (opinion). Affirmed, 296 F. 2d 384 (1961).

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Jack E. Carl v. Fred A. Seaton, Civil Action No. 3069-59. Judgment for defendant, June 20, 1961. Affirmed, October 18, 1962.

Carson Construction Co., 62 I.D. 422 (1955)

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C. F. Lytle Co., IBCA-172 (September 30, 1958)

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The Dredge Corporation v. E. J. Palmer, No. 366, in the United States District Court for the District of Nevada. Judgment for defendant, September 25, 1962. Appeal filed, 9th Cir.

Columbian Carbon Company, Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil Action No. 3233-56. Judgment for defendant, January 9, 1958. Appeal dismissed for want of prosecution, September 18, 1958, D.C. Cir. No. 14,647.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil Action No. 2125-56. Judgment for defendant, June 20, 1957; affd, 259 F. 2d 780 (1958); cert. denied, 358 U.S. 835 (1958).

The Dredge Corporation, 64 I.D. 368 (1957)
65 I.D. 336 (1958)

The Dredge Corporation v. J. Russell Penny, Civil Action No. 475, in the United States District Court for the District of Nevada. Suit pending.

Henry J. Ernst, A-27196 (November 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil Action No. 9303, in the United States District Court for the District of Alaska. Return of service quashed and complaint dismissed, December 28, 1956 (opinion). Affirmed, 244 F. 2d 344 (9th Cir. 1957).

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John J. Farrelly and The Fifty-One Oil Co. v. Douglas McKay, Civil Action No. 3037-55. Judgment for plaintiff, October 11, 1955; no appeal.

Franco Western Oil Company et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil Action No. 2810-59. Judgment for plaintiff, August 2, 1960 (opinion). No appeal taken.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Company v. Stewart L. Udall, Civil Action No. 219-61. Judgment for defendant, December 1, 1961. Appeal filed.

Stanley Garthofner, Duvall Brothers, 67 I.D. 4 (1960)

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General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. United States, Court of Claims No. 170-62. Suit pending.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil Action No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, August 3, 1961. Affirmed, October 18, 1962.

Charles B. Gonsales, A-27944 (April 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil Action No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, January 12, 1962; no appeal.

Gulf Oil Corporation, 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil Action No. 2209-62. Judgment for defendant, October 19, 1962. Appeal taken.

Gustav Hirsch Organization, Inc., IBCA-175 (October 30, 1958)

Gustav Hirsch Organization, Inc. v. United States, Court of Claims No. 416-59. Stipulated judgment for plaintiff, July 6, 1961.

Guthrie Electrical Construction, 62 I.D. 280 (1955)
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Guthrie Electrical Construction Co. v. United States, Court of Claims No. 129-58. Stipulation of settlement filed September 11, 1958. Compromise offer accepted and case closed October 10, 1958.

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Raymond J. Hansen et al., 67 I.D. 362 (1960)

Raymond J. Hansen et al. v. Stewart L. Udall, Civil Action No. 3902-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). Cert. den., 371 U.S. 901.

Robert Schulein v. Stewart L. Udall, Civil Action No. 4131-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962).

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, in the United States District Court for the District of Idaho. Stipulation for dismissal filed May 15, 1962.

J. D. Armstrong Co., Inc., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. United States, Court of Claims No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

John J. King, A-28543 (October 13, 1960)

John J. King v. Stewart L. Udall, Civil Action No. 68-61. Judgment for plaintiff, November 8, 1961. Reversed, September 27, 1962.

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Max L. Krueger v. Fred A. Seaton, Civil Action No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil Action No. 2784-62. Suit pending.

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Duncan Miller v. Stewart L. Udall, Civil Action No. 2932-62. Suit pending.

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Sheridan L. McGarry v. Stewart L. Udall, Civil Action No. 1262-62. Judgment for defendant, September 4, 1962. Appeal filed.

A. G. McKinnon, 62 I.D. 164 (1955)

A. J. McKinnon v. United States, Civil No. 9833, United States District Court for the District of Oregon. Judgment for plaintiff, December 12, 1959 (opinion); reversed, 289 F. 2d 908 (9th Cir. 1961).

Wade McNeil et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil Action No. 648-58. Judgment for defendant, June 5, 1959 (opinion); reversed, 281 F. 2d 931 (1960).

Wade McNeil v. Albert K. Leonard et al., Civil Action No. 2226, United States District Court for the District of Montana. Dismissed, November 24, 1961 (opinion). Order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil Action No. 678-62. Suit pending.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil Action No. 1379-62. Suit pending.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil Action No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959. No appeal.

Philip T. Garigan v. Stewart L. Udall, Civil Action No. 1577 Tuc., in the United States District Court for the District of Arizona. Suit pending.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil Action No. 346-60. Judgment for defendant, February 23, 1961. Affirmed, 307 F. 2d 676 (1962).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia and Shell Oil Company v. Stewart L. Udall, Civil Action No. 562-60. Judgment for defendant, June 27, 1961; no appeal taken.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960)
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Duncan Miller v. Stewart L. Udall, Civil Action No. 3470-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962).

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959)

Duncan Miller v. Stewart L. Udall, Civil Action No. 3931-60. Suit pending.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil Action No. 3904-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962).

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil Action No. 3932-60. Suit pending.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil Action No. 187-61. Suit pending.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1268-61. Judgment for defendant, September 28, 1962. Appeal filed.

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil Action No. 3409-61. Suit pending.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1381-62. Judgment for defendant, November 21, 1962 (opinion).

Henry S. Morgan et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil Action No. 3248-59. Judgment for defendant, February 20, 1961 (opinion). Affirmed, July 5, 1962; cert. denied, December 17, 1962.

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Morrison-Knudsen Co., Inc. v. United States, Court of Claims No. 239-61. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

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Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil Action No. 2139ND, in the United States District Court for the Southern District of California. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil Action No. 4181-60. Suit pending.

Eugene C. Paine et al., A-27632 (August 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall, Civil Action No. 2607-58. Judgment for plaintiff, September 24, 1959. Vacated and remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960. Reversed and remanded, February 23, 1961. Judgment for defendant, March 20, 1961.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil Action No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961).

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. United States, Court of Claims No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil Action No. 3953-60. Suit pending.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. United States, Court of Claims No. 269-62. Suit pending.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1351-62. Judgment for defendant, August 2, 1962. Appeal filed.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil Action No. 8033, in the United States District Court for the Northern District of California. Stipulation of dismissal filed, August 15, 1961.

Richfield Oil Corporation, 62 I.D. 269 (1955)

Richfield Oil Corporation v. Fred A. Seaton, Civil Action No. 3820-55. Dismissed without prejudice, March 6, 1958.

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil Action No. 2106-68. Judgment for plaintiff, December 10, 1962 (opinion).

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil Action No. 3903-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962).

Louise Safarik et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil Action No. 1081-61. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). Cert. den., 371 U.S. 901.

Samuel Gary v. Stewart L. Udall, Civil Action No. 1202-61. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962).

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil Action No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961.

Joseph M. Schuck v. Secretary of the Interior, Civil Action No. 1402 Tucson, in the United States District Court for the District of Arizona. Complaint dismissed, January 30, 1962.

Joseph M. Schuck v. Roy T. Helmandollar, Civil Action No. 1402 Tucson, in the United States District Court for the District of Arizona. Judgment for defendant, March 19, 1962; no appeal.

Seal and Company, 68 I.D. 94 (1961)

Seal and Company, Inc. v. United States, Court of Claims No. 274-62. Suit pending.

Stanley C. Soho et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., in the United States District Court for the District of Arizona. Case dismissed, January 17, 1961. No appeal.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. Stewart L. Udall, Civil Action No. 1852-62. Judgment for defendant, November 1, 1962 (opinion). Appeal taken.

Texas Construction Co., 64 I.D. 97 (1957)
Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. United States, Court of Claims No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Estate of John Thomas, Deceased Cayuse Allottee No. 223 and Estate of Joseph Thomas, Deceased Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil Action No. 859-581. On September 18, 1958, the court entered an order granting defendant's motion for judgment on the pleadings or for summary judgment. The plaintiffs appealed and on July 9, 1959, the decision of the District Court was affirmed, and on October 5, 1959, petition for rehearing en banc was denied, 270 F. 2d 319. A petition for a writ of certiorari was filed January 28, 1960, in the Supreme Court. The petition was denied on October 10, 1960, rehearing denied November 21, 1960.

Richard K. Todd et al., A-28090 et al. (October 30, 1961)

Bert F. Duesing v. Stewart L. Udall, Civil Action No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion). No appeal.

Atwood et al. v. Stewart L. Udall, Civil Actions 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; no appeal.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Suit pending.

Tyee Construction Co., IBCA-112 and 113 (April 30, 1958)

Tyee Construction Co. v. United States, Court of Claims No. 312-60. Judgment for defendant, June 1, 1962. No appeal.

Union Oil Company of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Company of California v. Stewart L. Udall, Civil Action No. 3042-58. Judgment for defendant, May 2, 1960 (opinion). Affirmed, 289 F. 2d 790 (1961).

United States v. Alonzo A. Adams et al., 64 I.D. 221 (1957)

Alonzo A. Adams et al. v. Paul B. Witmer et al., United States District Court for the Southern District of California, Civil Action No. 1222-57-Y. Complaint dismissed, November 27, 1957 (opinion); reversed and remanded, 271 F. 2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (1959).

United States v. Alonzo Adams, United States District Court for the Southern District of California, Civil No. 187-60-WM. Judgment for plaintiff, January 29, 1962 (opinion). Appeal taken, 9th Cir.

United States v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, in the United States District Court for the District of Nevada. Suit pending.

United States v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. United States, Civil Action No. C164-61, United States District Court for the District of Utah. Complaint dismissed, January 9, 1962; no appeal.

United States v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil Action No. 191-59. Judgment for defendant, April 4, 1960. No appeal.

United States v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil Action No. 560-59. Judgment for defendant, January 13, 1960. No appeal.

United States v. Francis Dlouhy et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil Action No. 405-59. Judgment for defendant, May 3, 1960. Appeal dismissed, November 28, 1960.

United States v. The Dredge Corporation, A-28022 (December 18, 1959)

The Dredge Corporation v. J. Russell Penny, Civil Action No. 396, in the United States District Court for the District of Nevada. Judgment for defendant, September 25, 1962. Appeal filed, 9th Cir.

United States v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil Action No. 344-58. Judgment for defendants, December 5, 1958 (opinion); affirmed, 271 F. 2d 836 (1959).

United States v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil Action No. 299, in the United States District Court for the District of Nevada. Suit pending.

United States v. E. V. Pressentin et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil Action No. 4804, in the United States District Court for the Western District of Washington. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil Action No. 1907-59. Judgment for defendant, January 15, 1960. Reversed and remanded, 284 F. 2d 195 (1960).

United States v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil Action No. 1331-62. Suit pending.

United States v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., in the United States District Court for the District of Arizona. Judgment for defendant, December 7, 1961. No appeal.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil Action No. 1744-56. Dismissed by stipulation, April 18, 1957.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. United States, Civil Action No. 278-59-PH, in the United States District Court for the Southern District of California. Judgment for plaintiff, October 26, 1959.

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil Action No. 3596, in the United States District Court for the District of New Mexico. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil Action No. 2029-58.

United States v. Buck Willcoxson et al., Civil Action No. 1492-59.

Buck Willcoxson v. United States, Civil Action No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff, and defendant, respectively, August 3, 1961. Appeal filed.

W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

W. L. Ridge v. United States, Court of Claims No. 301-60. Suit pending.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Department of the Interior of the United States of America, and Earl R. Wiseman, District Director of Internal Revenue, Civil Action No. 8281, in the United States District Court for the Western District of Oklahoma. The court dismissed the suit as to the Examiner of Inheritance, and the plaintiff dismissed the suit without prejudice as to the other defendants in the case.

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil Action No. 2595-60. Judgment for defendant, June 5, 1962. Remanded, December 20, 1962.

ADMINISTRATIVE PRACTICE

A finding by the Geological Survey that land in Alaska is prospectively valuable for oil and gas need not be published in the Federal Register under the provisions of section 5(a) of the Federal Register Act.

A decision directed to an individual requiring him to perform certain acts or suffer cancellation of his entry need not be published under the provisions of section 5(a) of the Federal Register Act.

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962) 69 I. D. 71

This Department may not accept a relinquishment of a material site effective many years before the date the relinquishment is filed.

J. M. Keeney et al., A-28856 (Aug. 6, 1962)

The administrative practice of rejecting applications for oil and gas leases where the lands applied for are included within outstanding leases does not prevent the Director, Bureau of Land Management, from inquiring into the validity of the outstanding leases.

Arkansas Louisiana Gas Company, A-28751 (Aug. 15, 1962)

Where there is a dispute between private parties over the authority of one to assign a lease in which another has a record interest, the Department will not approve an assignment of the lease until the dispute is resolved by the parties or the courts.

Pine Valley Gas & Oil Co., A-28812 (Sept. 11, 1962)

A decision by the Department declaring the cancellation of a public sale for certain reasons to be improper does not preclude a subsequent determination that the sale should be cancelled for a different reason.

Leland M. Lucas, A-29228 (Dec. 10, 1962)

ADMINISTRATIVE PROCEDURE ACT

HEARINGS

A hearing on the question of whether a reduction in grazing privileges under a license permitting use of the Federal range was made in accordance with the range code is subject to the provisions of the Administrative Procedure Act, and in determining whether a licensee's appeal from a decision reducing grazing privileges should be dismissed, the whole record must be considered, and not merely the licensee's testimony and papers in support of his appeal.

Lawrence Edwards, A-28991 (June 13, 1962) 69 I. D. 95

A request to produce new evidence which would require reopening a hearing proceeding in a contest against mining claims will be denied where there is no substantial equitable basis for granting the request.

United States v. Arizona Exploration Company et al., A-28876 (June 22, 1962)

An applicant for the public sale of land is not entitled to a hearing under the Administrative Procedure Act or under the Constitutional requirements of due process.

Monolith Portland Cement Company, A-28728 (July 11, 1962)

The provisions of section 5 of the Administrative Procedure Act relating to hearings do not apply to offers to lease public land for oil and gas because a hearing is not required by the pertinent statute, the Mineral Leasing Act, nor by the due process provision of the Constitution.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

RULE MAKING

The provisions of section 4 of the Administrative Procedure Act relating to rule making do not apply to regulations issued by the Secretary governing the issuance of oil and gas leases on the Kenai National Moose Range, because the regulation involves the use of public property and matters affecting public property are expressly excepted from the provisions governing rule making in section 4 of the Administrative Procedure Act.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

AGENCY

A person who selects the land to be applied for, fills in the land description on a previously signed oil and gas lease offer, and files the offer is the agent of the offeror and the offer to earn priority must be accompanied by the statement required by the pertinent regulation, 43 CFR 192.42(e)(4).

Where an oil and gas lease offer is filed by a person pursuant to a written agreement under which he is empowered to act as an attorney in fact for the offeror, the offer to earn priority must be accompanied by the statement required by the pertinent regulation, 43 CFR 192.42(e)(4), even though the party's offer is prepared in a manner not specifically provided for in the agreement.

The Department's regulation, 43 CFR 192.42 (e)(4), requiring statement of interest to be filed where an agent or attorney in fact has been authorized to act with respect to an offer is applicable to a situation where the agent's authority to act ceases with the filing of the offer.

Eugenia Bate, A-28519 (Dec. 28, 1962)
69 I. D. 230

A noncompetitive oil and gas lease erroneously issued pursuant to an offer filed by one acting as an agent for the offeror without an accompanying statement of any possible interest of the agent in the offer or the prospective lease, as required by regulation 43 CFR 192.42(e)(4), is properly held for cancellation.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., A-28699, A-28887 (Dec. 28, 1962)
69 I. D. 236

ALASKA

COAL LEASES AND PERMITS

Where no action was taken on an application to amend a coal permit for Alaskan land prior to the repeal of the act of October 20, 1914, by the act of September 9, 1959, the application must thereafter be rejected because of the cessation of authority in the Secretary to act under the 1914 act.

H. A. Faroe, A-28836 (Sept. 17, 1962)

ALASKA --Continued

HOMESTEADS

A homestead entry inadvertently allowed for land included within an existing entry is properly canceled because the land is unavailable for entry so long as the first entry remains of record.

Sam Fathol McGee, A-29031 (July 17, 1962)

Commuted homestead final proof which shows only that purported cultivation for the second year was done by clearing, discing and seeding frozen land during midwinter months in Alaska is properly rejected as failing to show on its face bona fide cultivation of the land, as discing and seeding can be done satisfactorily only during the proper season of the year.

John A. Bartel, A-29664 (Oct. 11, 1962)

Where a regulation is amended to remove the requirement that entrymen on or claimants of lands which are determined to be prospectively valuable for oil or gas after entry but before the entry or claim has been perfected must file a waiver of rights to the oil and gas for which the land has been found prospectively valuable and to substitute a different procedure in such cases, the provisions of the amended regulation will be applied to claimants and entrymen who have appealed to the Secretary from the demand made under the former regulation that they file a waiver, if there are no adverse rights or if the interest of the United States will not be prejudiced thereby.

Before the amendment of 43 CFR 102.22 on December 12, 1961, where land covered by a homestead entry or application was found to be prospectively valuable for oil and gas at any time prior to the submission of satisfactory final proof, it was proper to require the entryman to consent to the imposition of a reservation of the oil and gas to the United States, or apply for a reclassification of the land.

The act of March 8, 1922, was an extension to the territory of Alaska of the principles of the earlier surface homestead acts which did not apply to Alaska.

Where prior to the amendment of 43 CFR 102.22 on December 12, 1961, lands in a homestead entry in Kenai Peninsula, Alaska, were classified by the Geological Survey as prospectively valuable for oil and gas before the entryman had completed requirements for earning patent under the homestead laws, the entryman was properly required to file a mineral waiver and consent to patenting of the land with a reservation to the United States of the oil and gas deposits in the land together with the right to prospect for, mine,

ALASKA-- Continued

HOMESTEADS--Continued

and remove the reserved minerals in accordance with the act of March 8, 1922, as amended, if the lands were not subject to patenting under the act of September 14, 1960.

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962) 69 I.D. 71

Final proof for a homestead entry in Alaska which on its face shows that the entryman did not comply with the cultivation requirements of the homestead laws is properly rejected and the entry properly canceled.

Frederick N. Van Horn, A-29081 (Nov. 20, 1962)

LAND GRANTS AND SELECTIONS

An application to select land under the community purposes grant of subsection 6(a) of the Alaska Statehood Act is properly rejected for failure to include a minimum of 5,760 acres in the selection, subject to the opportunity afforded to the State to show that the selected land is isolated from other tracts open to selection.

State of Alaska, A-29314 (Oct. 30, 1962) 69 I.D. 190

NAVIGABLE WATERS

Even if lands lying beneath the waters of Tustumena Lake, which is in the part of the Kenai National Moose Range closed to oil and gas leasing, are assumed to have passed to the State of Alaska upon its admission to the Union, oil and gas lease offers describing such lands which were pending on that date must be rejected because the act authorizing the Secretary to lease such lands also provided that its provisions would cease to apply upon the admission of Alaska into the Union.

Since the act of July 3, 1958, opened lands underlying non-tidal navigable waters in Alaska to oil and gas leasing only pursuant to the provisions of the Mineral Leasing Act, the Secretary had the same discretionary authority over the issuance of leases for such lands as he had for other lands.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

ALASKA--Continued

OIL AND GAS LEASES

An offer to lease lands lying within the part of the Kenai National Moose Range closed to oil and gas leasing by the Secretary's order of July 24, 1958, is properly rejected.

Doris L. Ervin, Executrix of the Estate of E. Wells Ervin, Deceased, A-28330 (July 11, 1962)

Even if lands lying beneath the waters of Tustumena Lake, which is in the part of the Kenai National Moose Range closed to oil and gas leasing, are assumed to have passed to the State of Alaska upon its admission to the Union, oil and gas lease offers describing such lands which were pending on that date must be rejected because the act authorizing the Secretary to lease such lands also provided that its provisions would cease to apply upon the admission of Alaska into the Union.

Oil and gas lease offers filed for lands after such lands have been closed to oil and gas leasing must be rejected.

The Secretary has discretionary authority over issuing noncompetitive oil and gas leases and he may exercise this authority in a formal manner by promulgating a regulation closing a large area of public land, such as part of the Kenai National Moose Range, to oil and gas leasing.

Since the act of July 3, 1958, opened lands underlying non-tidal navigable waters in Alaska to oil and gas leasing only pursuant to the provisions of the Mineral Leasing Act, the Secretary had the same discretionary authority over the issuance of leases for such lands as he had for other lands.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

A noncompetitive oil and gas lease application for unsurveyed land in Alaska is properly rejected when the boundaries of the land to be leased are not laid out in relation to true cardinal directions and such action is possible.

Duncan Miller, A-28999 (Sept. 21, 1962)

SALES

The Alaska Public Sale Act and the departmental regulations and certificates of purchase issued under the act require that proof of use of the land for the purpose for which it was classified for sale be submitted within three years after issuance of a certificate of purchase and the Department has no authority to accept proof submitted after the three-year period.

Henry C. Durham, A-29032 (Oct. 11, 1962)

ALASKA--Continued

SALES--Continued

The use of land to store, dismantle, repair and sell used buildings, materials and motor vehicles on the land is a commercial or industrial use under the Alaska Public Sale Act, but where the background of a sale clearly shows that land was offered for sale on more or less of an understanding that the purchaser would construct housing on the land a program offered by him to use the land as a storage yard is properly rejected as being unacceptable.

Where the purchaser of land under the Alaska Public Sale Act appeals from the rejection of a program of development but indicates on appeal that he may be willing to change his program to an acceptable one, he should be afforded an opportunity to do so.

Thurston T. Jackson, A-29128 (Dec. 17, 1962)

STATEHOOD ACT

Even if lands lying beneath the waters of Tustumena Lake, which is in the part of the Kenai National Moose Range closed to oil and gas leasing, are assumed to have passed to the State of Alaska upon its admission to the Union, oil and gas lease offers describing such lands which were pending on that date must be rejected because the act authorizing the Secretary to lease such lands also provided that its provisions would cease to apply upon the admission of Alaska into the Union.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

TOWNSITES

An application for a deed to a town lot is properly rejected upon a showing that occupancy of the land by the applicant terminated before approval of the final subdivisional townsite survey.

Ethel and Benard Vogen, A-28835 (May 10, 1962)

A request for a preference right to purchase certain town lots in Anchorage, Alaska, is properly refused when the circumstances of the sale do not permit the preference right applicant to qualify under the terms of the regulations which implement the act of March 12, 1914, and do not permit the sale to be made under the act of May 3, 1934.

J. Glen Cassity, A-28987 (Aug. 17, 1962)

ALASKA--Continued

TRADE AND MANUFACTURING SITES

Rights to public land in Alaska as a trade and manufacturing site are gained only by the occupancy and possession of the land in good faith for purposes of trade, manufacture or other productive use.

In order to obtain credit for occupancy of public land in Alaska as a trade and manufacturing site which is initiated by occupancy and possession of the land, the claimant must file in the appropriate land office a notice of the initiation of the claim within 90 days from the date of its initiation, and where he fails to file the notice within the required period he cannot be given credit for any occupancy prior to the time he files either the notice or an application to purchase, whichever is earlier.

Albert L. Scepurek, A-28798 (Mar. 27, 1962)

Where a regulation is amended to remove the requirement that entrymen on or claimants of lands which are determined to be prospectively valuable for oil or gas after entry but before the entry or claim has been perfected must file a waiver of rights to the oil and gas for which the land has been found prospectively valuable and to substitute a different procedure in such cases, the provisions of the amended regulation will be applied to claimants and entrymen who have appealed to the Secretary from the demand made under the former regulation that they file a waiver, if there are no adverse rights or if the interest of the United States will not be prejudiced thereby.

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962) 69 I.D. 71

The rejection of an application for a trade and manufacturing site will be set aside and the case will be remanded for further consideration where, on appeal to the Secretary, the applicant submits for the first time certain information which may materially affect the proper disposition of his application.

James E. Allen, A-28891 (July 26, 1962)

Locations on public land of trade and manufacturing sites which are used for agricultural purposes are properly held null and void as not available for acquisition of title under the law authorizing sale of trade and manufacturing sites.

Charles G. Forck et al., A-29108 (Oct. 8, 1962)

APPLICATIONS AND ENTRIES

GENERALLY

A land office employee has no authority or duty to alter an erroneous description of land in an oil and gas lease offer in order to regard it as a valid offer.

Duncan Miller, A-28767 (July 23, 1962)

A land office employee has no authority or duty to alter an erroneous description of land in an oil and gas lease offer in order to regard it as a valid offer.

Lendal R. Smith, Sr., A-28868 (Aug. 10, 1962)

Where no action was taken on an application to amend a coal permit for Alaskan land prior to the repeal of the act of October 20, 1914, by the act of September 9, 1959, the application must thereafter be rejected because of the cessation of authority in the Secretary to act under the 1914 act.

H. A. Faroe, A-28836 (Sept. 17, 1962)

An applicant for desert land entry upon public land upon which authorized range users have placed permanent improvements is properly required to compensate the range users for such improvements as a condition to allowance of the entry.

Una D. Pidcoe, A-29068 (Nov. 6, 1962)

It is proper for a land office to delete from a metes and bounds description of unsurveyed land in an oil and gas lease offer land that cannot be leased in response to such offer because it is in fact surveyed and then to revise the description of the remaining land to be leased to reflect such deletion.

L. M. Schwartzkopf, A-29072 (Nov. 6, 1962)

A junior application for a desert land entry is properly rejected due to the allowance of the entry to a senior applicant where the junior applicant is unable to demonstrate clearly that the entry was allowed improperly for reasons sufficient to warrant cancellation of the entry.

Rulon Burl Egbert, A-29101 (Dec. 17, 1962)

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS

An application under section 2372 of the Revised Statutes, as amended, for the amendment of a patent covering land which was not intended to be entered to include land which was erroneously entered is properly rejected where the record contains no evidence that the entryman took every reasonable precaution and exertion to avoid error at the time of making the original entry.

Mrs. Elizabeth Bertha Poncia, A-28982 (Aug. 17, 1962)

The moratorium on filing certain applications for unclassified public lands also precluded the acceptance of a proposed amendment made during the moratorium period to substitute different lands for those described in a public sale application filed before the moratorium.

Nancy M. Rice, A-29076 (Dec. 10, 1962)

FILING

A partial assignment of an oil and gas lease is a document required by law or decision to be filed within a stated period and as such comes within the provisions of the regulation relating to filings made on the next business day when the last day of the stated period falls on a day when the office is officially closed.

Belco Petroleum Corporation, Charles Getzler, A-29131 (Mar. 2, 1962) 69 I. D. 3

BUREAU OF LAND MANAGEMENT

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal. He may, even in the absence of an appeal, take up any matter pending in any land office and dispose of it without waiting for a decision by the local land office.

Angela Matthews Boos, A-28712 (Sept. 21, 1962)

COAL LEASES AND PERMITS

APPLICATIONS

An application for a coal prospecting permit on land within the most popular and desirable recreation areas of a National Forest is properly rejected in the exercise of the discretion vested in the Secretary of the Interior as not in the public interest.

D. O. McGoon, Jr., A-28892 (July 12, 1962)

PERMITS

An application for a coal prospecting permit on land within the most popular and desirable recreation areas of a National Forest is properly rejected in the exercise of the discretion vested in the Secretary of the Interior as not in the public interest.

D. O. McGoon, Jr., A-28892 (July 12, 1962)

COAL RESEARCH PROGRAM

Section 6 of the Coal Research Act of July 7, 1960 (74 Stat. 337, 30 U.S.C. 666) requires that patents on inventions resulting from Government-financed research and development work under the Act be available to the general public without royalty or other restriction.

Section 6 of the Coal Research Act of July 7, 1960) 74 Stat. 337, 30 U.S.C. 666) requires the Secretary to take steps to assure that background patents essential to the practice of patents or the use of processes resulting from research and development contracts issued under the Act be available to the general public on reasonable terms.

Patent Requirements of the Coal Research Act, Saline Water Conversion Act and Helium Act, M-36637 (May 7, 1962) 69 I. D. 54

COLOR OR CLAIM OF TITLE

APPLICATIONS

An application to purchase land under the Color of Title Act is properly rejected when it is based on the assumption that the land was included in a patent issued to the applicant's original predecessor in interest for what appeared on the original plat of survey to be a regular 80-acre subdivision whereas in fact the subdivision, according to the actual survey on the ground, is less than a regular subdivision and the land applied for lies outside the subdivision patented.

Ingrid T. Allen, A-28638 (May 24, 1962)

An application to purchase land under the Color of Title Act is properly rejected when it is based on the assumption that the land to be purchased was included in a patent issued to the applicant's original predecessor in interest although the patent specified two lots by number not including the number of the lot applied for.

Lester J. Hamel, A-28830 (Sept. 17, 1962)

An application to purchase public land under the Color of Title Act is properly rejected when it appears that the claim is not predicated upon facts which entitle an applicant to acceptance of a color of title application.

An application to purchase public land under the Color of Title Act is properly rejected when it is based on the erroneous assumption that the patent of the applicant's original predecessor in interest included the land applied for whereas in fact a dependent resurvey established the original lines of the survey so as to exclude the land applied for from the land described in the original patent and all subsequent conveyances.

Storm Brothers, A-29023 (Oct. 8, 1962)

An application to purchase public land under the Color of Title Act is properly rejected when it is shown that the settlement or occupation of the land, attended by improvement and cultivation, by the applicant's remote grantor for more than 20 years was with knowledge that the land was owned by the United States, and there is otherwise lacking the required 20 years of good faith adverse possession under claim or color of title.

Walter G. Kreuter, A-29065 (Oct. 22, 1962)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH

An application to purchase public land under the Color of Title Act is properly rejected when it is shown that the settlement or occupation of the land, attended by improvement and cultivation, by the applicant's remote grantor for more than 20 years was with knowledge that the land was owned by the United States, and there is otherwise lacking the required 20 years of good faith adverse possession under claim or color of title.

Walter G. Kreuter, A-29065 (Oct. 22, 1962)

CONTESTS AND PROTESTS

Where a complaint in a Government contest is served upon one who has been represented as being the attorney for the contestee, the contest is properly decided by default against the contestee where an answer to the complaint is filed more than 30 days after service of the complaint upon the attorney.

United States v. Carl D. Jensen, A-28789 (Aug. 6, 1962)

CONTRACTS

GENERALLY

The disclaimer clause in sales by the United States on an "as is" and "where is" basis requires the application of the strict rule of caveat emptor. The "as is" condition applies equally to the condition of the commodity involved at the inspection and to the sale of it.

Appeal of Duncan Miller, IBCA-305 (Apr. 18, 1962) 69 I.D. 25

CONTRACTS--Continued

ACTS OF GOVERNMENT

A claim for acceleration of work is denied where the evidence fails to establish that the contracting officer demanded performance prior to the contract time as extended by change order, stop order and excusable delay as determined by the Board.

Appeal of William L. Warfield Construction Company, IBCA-196, IBCA-202, IBCA-206 (May 3, 1962)

ADDITIONAL COMPENSATION

Where a request for reconsideration of a decision of the Board is not persuasive of error by the Board, the decision will be affirmed. Where the Board finds on reconsideration that its determinations under its prior decision as to the amounts of equitable adjustments due under the Changes clause were not sufficient, the Board will modify its decision accordingly.

Appeal of Henly Construction Company, IBCA-249 (Apr. 27, 1962) 69 I.D. 43

A claim for acceleration of work is denied where the evidence fails to establish that the contracting officer demanded performance prior to the contract time as extended by change order, stop order and excusable delay as determined by the Board.

In the performance of a contract for the construction of a Riding Stable, where the Government required changes in the design of windows, a smokestack, rafter overhangs, sewer lines, and studs, and required the contractor to peel bark from fence posts, the contractor was entitled to additional compensation pursuant to the Changes clause.

In the digging of post holes while constructing a fence for the paddock area of a Riding Stable, the contractor encountered large undisclosed subterranean rocks and bricks which prevented machine drilling and necessitated removal by hand labor at extra costs. The Board found a changed condition under the Changed Conditions clause which warranted extra compensation.

While excavating footings for the construction of a Riding Stable, the contractor encountered an undisclosed seeping water condition at the site, which necessitated the construction of a ditch, and the use of extra equipment for which the appellant was entitled to additional

CONTRACTS--Continued

ADDITIONAL COMPENSATION--Continued

compensation pursuant to the Changed Conditions clause. The contractor was also entitled to an extension of 38 days for performance by reason thereof.

Appeal of William L. Warfield Construction Company, IBCA-196, IBCA-202, IBCA-206 (May 3, 1962)

A contractor is not entitled to additional compensation for extra work pursuant to the Changed Conditions clause (Clause 4) of Standard Form 23A (March 1953), where the presence of subterranean rock on the site was disclosed by test holes, and the evidence established that the conditions encountered were not unexpected or unanticipated.

Appeal of Wilson, Hockinson & Cantrall, Inc., IBCA-263 (July 17, 1962)

A claim for additional compensation for concrete will be dismissed on motion, where the contract provided for measurement of concrete for payment in accordance with neat lines of pre-existing structures on the drawings, and the contractor failed to seek clarification from the contracting officer, before pouring the concrete, as to his later allegations that the pre-existing structures were not in accordance with the neat lines.

Appeal of Flora Construction Company and Argus Construction Company, IBCA-319 (July 19, 1962)

The failure of a contractor to comply with its supplier's requirement for the construction of concrete foundations for diesel engines resulted in the denial of the contractor's claim for additional compensation.

Appeal of Northern Electric Corporation, IBCA-194 (Aug. 29, 1962)

An appeal involving a claim for additional compensation under the Changed Conditions clause of a construction contract, based on an overrun in excavation quantities, will be dismissed where the contractor knowingly submitted an improvident unbalanced bid in reliance upon the Government's erroneous estimates; where the conditions actually encountered did not differ materially from those shown on the drawings, specifications and logs of exploration, and such conditions could have been reasonably anticipated from a study of the drawings, specifications and

CONTRACTS--Continued

ADDITIONAL COMPENSATIONS--Continued

logs of exploration, or an examination of the site.

Appeal of Otis Williams and Company, IBCA-324, (Sept. 5, 1962) 69 I.D. 135

An appeal based on claims for costs of unreasonable delay while awaiting the issuance of a change order will be dismissed as constituting an alleged breach of contract over which the Board has no jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-265 (Sept. 26, 1962) 69 I.D. 147

Where the specifications of a contract for clearing a reservoir site define the types of materials which may be retained or disposed of by the contractor, he is not entitled to additional compensation for the value of other materials, not within the definitions, which materials he was not permitted to retain.

Appeal of Richard F. Greenhalgh, IBCA-283 (Oct. 31, 1962)

A contractor is not entitled to additional compensation for unauthorized deviation from contract requirements during bulkhead construction.

The ebb and flow of tide is not a changed condition within the meaning of the Changed Conditions clause (Clause 4) of Standard Form 23A (March 1953).

Appeal of H. B. Fowler & Company, Inc., IBCA-294 (Dec. 10, 1962)

An appeal based on claims for additional compensation because of unreasonable delays by the Government will be dismissed, since it alleges breach of contract over which the Board has no jurisdiction.

Appeal of Sooge Construction Company, IBCA-286 (Dec. 11, 1962)

CONTRACTS--Continued

APPEALS

The Board of Contract Appeals lacks jurisdiction to reform or rescind contracts.

Appeal of Duncan Miller, IBCA-305 (Apr. 18, 1962) 69 I. D. 25

A motion for reconsideration is denied where the additional evidence presented is not persuasive of error by the Board, and no other matters are advanced that were not fully considered by the Board in its original decision.

Appeal of Fred E. Hicks Construction Company, IBCA-271 (May 11, 1962)

The Board is without jurisdiction to consider an untimely appeal.

Appeal of Craftsmen Construction Company, Inc., IBCA-326 (Aug. 20, 1962)

The Board lacks jurisdiction to decide an appeal by a contractor in the absence of a finding of fact or decision by the contracting officer. The Board does not have original jurisdiction over contractor's claims since its jurisdiction is appellate.

The Board lacks jurisdiction over requests by the contractor for contract administration actions by the contracting officer.

The Board lacks jurisdiction to consider a "claim" which represents an offer in compromise.

Appeal of John Martin Company, Inc., IBCA-316 (Sept. 21, 1962)

BREACH

An appeal will be dismissed by the Board for lack of jurisdiction where the contractor's claim is based on breach of contract, involving expense of defending injunction litigation by third parties against contractor.

Appeal of Ford-Fielding, Incorporated, IBCA-303 (July 2, 1962) 69 I. D. 116

CONTRACTS--Continued

CHANGED CONDITIONS

In the digging of post holes while constructing a fence for the paddock area of a Riding Stable, the contractor encountered large undisclosed subterranean rocks and bricks which prevented machine drilling and necessitated removal by hand labor at extra costs. The Board found a changed condition under the Changed Conditions clause which warranted extra compensation.

While excavating footings for the construction of a Riding Stable, the contractor encountered an undisclosed seeping water condition at the site, which necessitated the construction of a ditch, and the use of extra equipment for which the appellant was entitled to additional compensation pursuant to the Changed Conditions clause. The contractor was also entitled to an extension of 38 days for performance by reason thereof.

Appeal of William L. Warfield Construction Company, IBCA-196m IBCA-202, IBCA-206 (May 3, 1962)

A contractor is not entitled to additional compensation for extra work pursuant to the Changed Conditions clause (Clause 4) of Standard Form 23A (March 1953), where the presence of subterranean rock on the site was disclosed by test holes, and the evidence established that the conditions encountered were not unexpected or unanticipated.

Appeal of Wilson, Hockinson & Cantrall, Inc., IBCA-263 (July 17, 1962)

An appeal involving a claim for additional compensation under the Changed Conditions clause of a construction contract, based on an overrun in excavation quantities, will be dismissed where the contractor knowingly submitted an improvident unbalanced bid in reliance upon the Government's erroneous estimates; where the conditions actually encountered did not differ materially from those shown on the drawings, specifications and logs of exploration, and such conditions could have been reasonably anticipated from a study of the drawings, specifications and logs of exploration, or an examination of the site.

Appeal of Otis Williams and Company, IBCA-324 (Sept. 5, 1962) 69 I. D. 135

CONTRACTS--Continued

CHANGES AND EXTRAS

Where a request for reconsideration of a decision of the Board is not persuasive of error by the Board, the decision will be affirmed. Where the Board finds on reconsideration that its determinations under its prior decision as to the amounts of equitable adjustments due under the Changes clause were not sufficient, the Board will modify its decision accordingly.

Appeal of Henly Construction Company, IBCA-249 (Apr. 27, 1962) 69 I.D.43

In the performance of a contract for the construction of a Riding Stable, where the Government required changes in the design of windows, a smokestack, rafter overhangs, sewer lines, and studs, and required the contractor to peel bark from fence posts; the contractor was entitled to additional compensation pursuant to the Changes clause.

Appeal of William L. Warfield Construction Company, IBCA-196, IBCA-202, IBCA-206 (May 3, 1962)

Under a contract involving the construction of two tunnels, where the contract specifications provide that the judgment of the contracting officer shall determine the quantity of permanent timbering necessary for satisfactory construction of the tunnels, the instructions of the contracting officer for reduction of such quantity of timbering in the major areas of the tunnels do not constitute actual or constructive changes within the meaning of the Changes Clause (Clause 3), of Standard Form 23A.

Appeal of Cheney-Cherf and Associates, IBCA-250 (June 19, 1962) 69 I.D.102

The failure of a contractor to comply with its supplier's requirement for the construction of concrete foundations for diesel engines resulted in the denial of the contractor's claim for additional compensation.

Appeal of Northern Electric Corporation, IBCA-194 (Aug. 29, 1962)

An appeal based on claims for costs of unreasonable delay while awaiting the issuance of a change order will be dismissed as constituting an alleged breach of contract over which the Board has no jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-265 (Sept. 26, 1962) 69 I.D. 147

CONTRACTS--Continued

CHANGES AND EXTRAS--Continued

Under a change order for elimination of part of the work, where the contracting officer considers but omits to complete the equitable adjustment of the time allowed for performance of the remainder of the work, and the contractor has not appealed as to that omission, the Board will take jurisdiction de novo as to such errors or omissions and will determine the equitable adjustment.

Appeal of Eastern Maintenance Company, IBCA-275 (Nov. 29, 1962) 69 I.D. 215

A contractor is not entitled to additional compensation for unauthorized deviation from contract requirements during bulkhead construction.

The ebb and flow of tide is not a changed condition within the meaning of the Changed Conditions clause (Clause 4) of Standard Form 23A (March 1953).

Appeal of H. B. Fowler & Company, Inc., IBCA-294 (Dec. 10, 1962)

COMPTROLLER GENERAL

The Board lacks jurisdiction to make recommendations to the Comptroller General concerning the remission or waiver of liquidated damages.

Appeal of John Martin Company, Inc., IBCA-316 (Sept. 21, 1962)

CONTRACTING OFFICER

Under a contract involving the construction of two tunnels, where the contract specifications provide that the judgment of the contracting officer shall determine the quantity of permanent timbering necessary for satisfactory construction of the tunnels, the instructions of the contracting officer for reduction of such quantity of timbering in the major areas of the tunnels do not constitute actual or constructive changes within the meaning of the Changes Clause (Clause 3), of Standard Form 23A.

Appeal of Cheney-Cherf and Associates, IBCA-250 (June 19, 1962) 69 I.D. 102

CONTRACTS--Continued

CONTRACTING OFFICER--Continued

A claim for additional compensation for concrete will be dismissed on motion, where the contract provided for measurement of concrete for payment in accordance with neat lines of pre-existing structures on the drawings, and the contractor failed to seek clarification from the contracting officer, before pouring the concrete, as to his later allegations that the pre-existing structures were not in accordance with the neat lines.

Appeal of Flora Construction Company and Argus Construction Company, IBCA-319 (July 19, 1962)

Where the contractor fails to sustain its burden of proof, the findings and decisions of the contracting officer must be accepted and will stand unless it is manifest on the very face of the record that they are erroneous.

Appeal of John Martin Company, Inc. IBCA-316 (Sept. 21, 1962)

Where examination of the site and of the contract limitations concerning materials to be retained by the contractor should have created a doubt as to his right of retention, the contractor should have sought clarification from the contracting officer prior to bidding.

Appeal of Richard F. Greenhalgh, IBCA-283 (Oct. 31, 1962)

Under a change order for elimination of part of the work, where the contracting officer considers but omits to complete the equitable adjustment of the time allowed for performance of the remainder of the work, and the contractor has not appealed as to that omission, the Board will take jurisdiction de novo as to such errors or omissions and will determine the equitable adjustment.

The board will generally remand a claim not previously presented to the contracting officer. Under the unusual circumstances surrounding this appeal, the claim will not be remanded, since the ends of justice would not be served when such remand would cause further delay in the disposition of the claim.

Appeal of Eastern Maintenance Company, IBCA-275 (Nov. 29, 1962) 69 I. D. 215

CONTRACTS--Continued

DAMAGES

Liquidated Damages

The allowance of additional time for performance of a contract, allegedly due to rain, is denied where the contractor fails to establish that periods of precipitation were unforeseeable and unusually severe within the meaning of Clause 5(c) of Standard Form 23A (March 1953).

The contracting officer's assessment of liquidated damages for alleged failure of a contractor to perform within the time required must be set aside, where the time for performance for the period of assessment had been extended by the contracting officer for an excusable cause.

Appeal of Brooks and Mixon, IBCA-277 (June 5, 1962) 69 I. D. 84

Contract provisions for liquidated damages are not converted into a penalty where no actual damage is caused to the Government by the contractor's delay. Such provisions are to be judged as of the time of making the contract.

Appeal of Southwest Welding and Manufacturing Division, Yuba Consolidated Industries, Inc., IBCA-281 (Oct. 29, 1962) 69 I. D. 173

DELAYS OF CONTRACTOR

Where the issuance by the Government of a notice to proceed with the contract work would require the contractor to begin performance during unusually severe and unforeseeable weather, the delay by the contractor in not commencing work during the period of such weather is excusable.

In determining the question of alleged unforeseeable and unusually severe weather, official weather reports covering a period of ten years next preceding the year of the weather complained of are sufficient to establish an average pattern of weather for comparison purposes.

Appeal of Triangle Construction Company, IBCA-232 (Mar. 14, 1962) 69 I. D. 7

CONTRACTS--Continued

DELAYS OF CONTRACTOR--Continued

The allowance of additional time for performance of a contract, allegedly due to rain, is denied where the contractor fails to establish that periods of precipitation were unforeseeable and unusually severe within the meaning of Clause 5(c) of Standard Form 23A (March 1953).

The contracting officer's assessment of liquidated damages for alleged failure of a contractor to perform within the time required must be set aside, where the time for performance for the period of assessment had been extended by the contracting officer for an excusable cause.

Appeal of Brooks and Mixon, IBCA-277 (June 5, 1962) 69 I.D. 84

Under a standard construction contract requiring that causes of delay be "unforeseeable" in order to be excusable, a strike involving a steel supplier, which was in existence when the prime contractor's bid was submitted, does not qualify as an unforeseeable cause of delay.

Where an official report of the Weather Bureau states that new low temperature records were established for the month in which there was delay in performance of the contract because of allegedly cold weather, such evidence will be accepted by the Board as meeting the criteria for establishing a claim of unusually severe weather as an unforeseeable cause of delay.

Appeal of Allied Contractors, Inc., IBCA-265 (Sept. 26, 1962) 69 I.D. 147

The unexplained breakdown of machinery in contractor's plant is not excusable per se and does not furnish the basis for an excusable delay within the meaning of the standard "Default" clause in a Government supply contract.

Appeal of Vereinigte Osterreichische Eisenund Stahlwerke Aktiengesellschaft, IBCA-327 (Oct. 22, 1962)

Contract provisions for liquidated damages are not converted into a penalty where no actual damage is caused to the Government by the contractor's delay. Such provisions are to be judged as of the time of making the contract.

CONTRACTS--Continued

DELAYS OF CONTRACTOR--Continued

Where a supply contract contains two separate required delivery dates for two lots of equipment to be delivered to the work site, and one lot is delivered 15 days late, the delivery of the remaining lot on time does not constitute substantial performance.

An agreement between the Government and its general contractor for a dam, to extend the time for completion including the time for installation of Government-furnished equipment, does not operate as a waiver by the Government of the delivery schedule in the separate contract with the supplier of the equipment. The equipment contractor had no knowledge of the extension of the general contract until after delivery of the equipment. No representations concerning such extension were made to the equipment contractor by the Government.

Appeal of Southwest Welding and Manufacturing Division, Yuba Consolidated Industries, Inc., IBCA-281 (Oct. 29, 1962) 69 I.D. 173

A contract is substantially performed when it is so nearly completed that the remaining work is inconsequential and will not impair the utility of the product of the contract.

Appeal of Eastern Maintenance Company, IBCA-275 (Nov. 29, 1962) 69 I.D. 215

DELAYS OF GOVERNMENT

Proof of a delay by the Government does not per se give a contractor a right to an extension of time in the absence of evidence that the Government's delay caused a delay in the contractor's performance.

An appeal based on claims for costs of unreasonable delay while awaiting the issuance of a change order will be dismissed as constituting an alleged breach of contract over which the Board has no jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-265 (Sept. 26, 1962) 69 I.D. 147

An appeal based on claims for additional compensation because of unreasonable delays by the Government will be dismissed, since it alleges breach of contract over which the Board has no jurisdiction.

Appeal of Sooge Construction Company, IBCA-286 (Dec. 11, 1962)

CONTRACTS--Continued

DRAWINGS

A claim for additional compensation for concrete will be dismissed on motion, where the contract provided for measurement of concrete for payment in accordance with neat lines of pre-existing structures on the drawings, and the contractor failed to seek clarification from the contracting officer, before pouring the concrete, as to his later allegations that the pre-existing structures were not in accordance with the neat lines.

Appeal of Flora Construction Company and Argus Construction Company, IBCA-319 (July 19, 1962)

Drawings that do not expressly purport to allocate the work shown on them as between separate bid proposals, defined in the specifications and awarded to different contractors, will not be construed as attempting to so allocate the work, where such a construction would tend to confuse rather than clarify the line of demarcation expressed in the specifications.

Appeal of D. L. Moffitt Company, IBCA-285 (Oct. 3, 1962) 69 I. D. 161

INTERPRETATION

When contract is ambiguous, it will be construed most strongly against the party drafting it, and the Board will apply the rule of contra proferentem.

Appeal of Northern Electric Corporation, IBCA-194 (Aug. 29, 1962)

Drawings that do not expressly purport to allocate the work shown on them as between separate bid proposals, defined in the specifications and awarded to different contractors, will not be construed as attempting to so allocate the work, where such a construction would tend to confuse rather than clarify the line of demarcation expressed in the specifications.

The phrase "existing water system" in specifications that do not elsewhere clarify this phrase, which is also left unclarified by other aids to interpretation, does not comprehend a water line whose addition to the system is provided for in the same specifications, since the ordinary meaning of language

CONTRACTS--Continued

INTERPRETATION--Continued

throughout the country is given to words unless circumstances show that a different meaning is applicable.

Appeal of D. L. Moffitt Company, IBCA-285 (Oct. 3, 1962) 69 I. D. 161

The rule of contra proferentem is applied where the contract specifications are contradictory and the contractor's interpretation thereof is reasonable.

Appeal of Contractors, Incorporated, IBCA-304 (Oct. 11, 1962)

Where examination of the site and of the contract limitations concerning materials to be retained by the contractor should have created a doubt as to his right of retention, the contractor should have sought clarification from the contracting officer prior to bidding.

Appeal of Richard F. Greenhalgh, IBCA-283 (Oct. 31, 1962)

NOTICES

Where the issuance by the Government of a notice to proceed with the contract work would require the contractor to begin performance during unusually severe and unforeseeable weather, the delay by the contractor in not commencing work during the period of such weather is excusable.

Appeal of Triangle Construction Company, IBCA-232 (Mar. 14, 1962) 69 I. D. 7

PERFORMANCE

Where a supply contract contains two separate required delivery dates for two lots of equipment to be delivered to the work site, and one lot is delivered 15 days late, the delivery of the remaining lot on time does not constitute substantial performance.

Appeal of Southwest Welding and Manufacturing Division, Yuba Consolidated Industries, Inc., IBCA-281 (Oct. 29, 1962) 69 I. D. 173

CONTRACTS--Continued

PERFORMANCE--Continued

A contract is substantially performed when it is so nearly completed that the remaining work is inconsequential and will not impair the utility of the product of the contract.

Appeal of Eastern Maintenance Company, IBCA-275
(Nov. 29, 1962) 69 I. D. 215

SPECIFICATIONS

Under a contract involving the construction of two tunnels, where the contract specifications provide that the judgment of the contracting officer shall determine the quantity of permanent timbering necessary for satisfactory construction of the tunnels, the instructions of the contracting officer for reduction of such quantity of timbering in the major areas of the tunnels do not constitute actual or constructive changes within the meaning of the Changes Clause (Clause 3), of Standard Form 23A.

Appeal of Cheney-Cherf and Associates,
IBCA-250 (June 19, 1962) 69 I. D. 102

The phrase "existing water system" in specifications that do not elsewhere clarify this phrase, which is also left unclarified by other aids to interpretation, does not comprehend a water line whose addition to the system is provided for in the same specifications, since the ordinary meaning of language throughout the country is given to words unless circumstances show that a different meaning is applicable.

Appeal of D. L. Moffitt Company, IBCA-285
(Oct. 3, 1962) 69 I. D. 161

Where the specifications of a contract for clearing a reservoir site define the types of materials which may be retained or disposed of by the contractor, he is not entitled to additional compensation for the value of other materials, not within the definitions, which materials he was not permitted to retain.

Where examination of the site and of the contract limitations concerning materials to be retained by the contractor should have created a doubt as to his right of retention, the contractor should have sought clarification from the contracting officer prior to bidding.

Appeal of Richard F. Greenhalgh, IBCA-283
Oct. 31, 1962)

CONTRACTS--Continued

SUBCONTRACTORS AND SUPPLIERS

The Board has jurisdiction of appeals presented by a prime contractor in behalf of a subcontractor involving claims for additional costs of performance.

Appeal of Cheney-Cherf and Associates,
IBCA-250 (June 19, 1962) 69 I. D. 102

Under a standard construction contract requiring that causes of delay be "unforeseeable" in order to be excusable, a strike involving a steel supplier, which was in existence when the prime contractor's bid was submitted, does not qualify as an unforeseeable cause of delay.

Appeal of Allied Contractors, Inc., IBCA-265
(Sept. 26, 1962) 69 I. D. 147

UNFORESEEABLE CAUSES

Under a standard construction contract requiring that causes of delay be "unforeseeable" in order to be excusable, a strike involving a steel supplier, which was in existence when the prime contractor's bid was submitted, does not qualify as an unforeseeable cause of delay.

Where an official report of the Weather Bureau states that new low temperature records were established for the month in which there was delay in performance of the contract because of allegedly cold weather, such evidence will be accepted by the Board as meeting the criteria for establishing a claim of unusually severe weather as an unforeseeable cause of delay.

Appeal of Allied Contractors, Inc., IBCA-265
(Sept. 26, 1962) 69 I. D. 147

WAIVER AND ESTOPPEL

An agreement between the Government and its general contractor for a dam, to extend the time for completion including the time for installation of Government-furnished equipment, does not operate as a waiver by the Government of the delivery schedule in the separate contract with the supplier of the equipment. The equipment contractor had no knowledge of the extension of the general contract until after delivery of the equipment.

CONTRACTS--Continued

WAIVER AND ESTOPPEL--Continued

No representations concerning such extension were made to the equipment contractor by the Government.

Appeal of Southwest Welding and Manufacturing Division, Yuba Consolidated Industries, Inc., IBCA-281 (Oct. 29, 1962) 69 I.D. 173

DESERT LAND ENTRY

GENERALLY

A desert land application for land that is unsurveyed is properly rejected.

Donna M. Ker et al., A-28979, A-28980 (Aug. 17, 1962)

Where land within a desert land entry is reported to be prospectively valuable for oil and gas before the entryman submits final proof, it is proper to require the entryman to file consent to the reservation to the United States of the oil and gas deposits in the land or to contest the mineral classification of the land.

The mere filing of an application for relief under the act of February 14, 1934, does not vest in the applicant any such interest in the land as will prevent the imposition of a reservation to the United States of the oil and gas deposits in a desert land entry on which final proof has not been submitted.

C. D. Adams, on Behalf of the Heirs of John Q. Adams, A-28900 (Aug. 30, 1962)

A junior application for a desert land entry is properly rejected due to the allowance of the entry to a senior applicant where the junior applicant is unable to demonstrate clearly that the entry was allowed improperly for reasons sufficient to warrant cancellation of the entry.

Rulon Burl Egbert, A-29101 (Dec. 17, 1962)

DESERT LAND ENTRY--Continued

APPLICANTS

An applicant for desert land entry upon public land upon which authorized range users have placed permanent improvements is properly required to compensate the range users for such improvements as a condition to allowance of the entry.

Una D. Pidcoe, A-29068 (Nov. 6, 1962)

APPLICATIONS

The filing of an application for desert land entry does not give the applicant an interest in the land which requires that the application be held until the land becomes available for disposition.

Donna M. Ker et al., A-28979, A-28980 (Aug. 17, 1962)

An application for desert land entry is properly rejected when the applicant furnishes only general information of the character of the land and fails to submit any evidence tending to show that there is an adequate source of subterranean water to be tapped by irrigation wells.

John W. Stephenson, A-28986 (Aug. 30, 1962)

A desert land application is properly rejected where the applicant does not meet the requirements of the applicable regulation for showing that an adequate supply of water for irrigation exists.

Bernice B. Crooks et al., A-28698 (Sept. 24, 1962)

A junior application for a desert land entry is properly rejected due to the allowance of the entry to a senior applicant where the junior applicant is unable to demonstrate clearly that the entry was allowed improperly for reasons sufficient to warrant cancellation of the entry.

Rulon Burl Egbert, A-29101 (Dec. 17, 1962)

DESERT LAND ENTRY--Continued

CANCELLATION

Where a desert land entryman completes a well on the last day of an extension of time allowed for that purpose and files final proof sufficient on its face within 90 days thereafter, it is erroneous to cancel the entry on the ground that the final proof was filed too late.

Lois L. Pollard, A-29007 (Aug. 10, 1962)

It is proper to cancel a desert land entry where the final proof shows on its face that neither cultivation nor reclamation has been accomplished on the entry within the time allowed by law.

George Arnold Jurn, A-28948 (Aug. 16, 1962)

A desert land entry is properly canceled as to that portion of the entry for which the final proof shows only a plan to utilize a portable sprinkler system, and for which there is no showing that the entryman has a portable system which can actually apply water to the 240 acres as soon as the land is ready for cultivation.

Clinton C. Douglass, Jr., A-28961 (Sept. 20, 1962)

An application for extension of time for submission of final proof of the reclamation and cultivation of a desert land entry is properly denied when the applicant fails to show that until shortly before the expiration of the statutory life of the entry he made any effort to have a well drilled on his entry and that completion of the well within the life of the entry was unavoidably delayed through no fault on his part.

Trinidad Alba, A-29061 (Oct. 30, 1962)

A desert land entry is properly canceled when it is clear that the entryman did not effect compliance with the requirements of the desert land law for reclamation and cultivation of the entry during the statutory life of the entry and any extensions that may have been granted.

Bessie Brown et al., A-29100 (Dec. 10, 1962)

CLASSIFICATION

A refusal to classify land covered by a desert land application as suitable for agricultural crop production because there is no known source of irrigation water will not be disturbed in the absence of positive and substantial evidence that the classification is erroneous.

Ramon Q. Ortega, A-28661 (Feb. 8, 1962

A desert land classification is properly refused for land dependent for irrigation water upon an underground supply which, on the basis of current information, will be sufficient only for a limited acreage from which pumping may be done more economically.

Otis O. Briant et al., A-28757 (Mar. 15, 1962)

A showing that a desert land applicant has drilled for underground water for a period of 5 years to a depth of 552 feet without developing a water supply warrants a conclusion that there is an insufficient quantity of water to irrigate his proposed desert land entry, and his application for entry is, therefore, properly rejected.

James Patrick Quinn, A-28634 (Apr. 11, 1962)

Desert land applications are properly rejected where all of the estimated irrigation water supply will be needed for other land of better soils dependent upon the same source of supply.

Roger D. Johnson et al., A-28734 (May 17, 1962)

A desert land application is properly rejected when, during the course of processing the application, the Department classifies a large area of land, including the tract applied for, as unsuitable for agricultural production.

Floyd W. Thomas, A-28773 (June 27, 1962)

A desert land classification is properly refused for land dependent for irrigation water upon an underground basin which, on the basis of current information, will be taxed to the limit of available recharge for land which has as good or better soil and a prior claim to water because of the earlier filing of desert land applications for that land.

Joseph Ortiz Fernandez, A-28772 (July 12, 1962)

DESERT LAND ENTRY--Continued

CLASSIFICATION--Continued

A desert land classification is properly refused for land that has no known source of irrigation water and which would constitute a marginal farm venture if water could be found in sufficient quantity for irrigation.

Max R. Walden, A-28813 (July 12, 1962)

A desert land application for public land on which previous entries were allowed, relinquished and canceled and on which special use permits allowing drilling for the development of irrigation water have been granted without any water development as a result is properly rejected because the land is classified as more suitable for the production of native grasses and forage plants than for the production of cultivated crops.

Hilda M. Warrick et al., A-29359 (Aug. 15, 1962)

An application for desert land entry is properly rejected when the applicant furnishes only general information of the character of the land and fails to submit any evidence tending to show that there is an adequate source of subterranean water to be tapped by irrigation wells.

John W. Stephenson, A-28986 (Aug. 30, 1962)

Applications for desert land entry are properly rejected when it appears that water cannot feasibly be made available for irrigation of the land applied for or that the source of water upon which the applicants rely is already being put to beneficial use on other land in the drainage area.

Virginia M. MacQuarrie et al., A-28839 (Sept. 7, 1962)

A classification of land as unsuitable for desert land entry is proper when it appears that because of the elevation the summer temperatures are cool and the growing season very short and that because of the pumping lift costs of irrigation will be excessive.

Mrs. Jessie L. Greer, A-28969 (Sept. 18, 1962)

DESERT LAND ENTRY--Continued

CLASSIFICATION--Continued

Applications for desert land entry are properly rejected where the land applied for is in an area which is under study to determine the extent of the ground water supply, the demands upon the supply by existing water users, and the availability of water for additional agricultural development.

Andrew W. Kern et al., A-28929 (Sept. 25, 1962)

Where two tracts of land sought for desert land entry have been included in an extensive area classified as nonagricultural, it is appropriate to remand the cases to determine whether the blanket classification should be applied to the two tracts.

Woodrow C. Stingley et al., A-28881 (Sept. 25, 1962)

Desert land applications rejected in part because the land is unsuitable for cultivation will be remanded for a determination of the economic feasibility of the proposed entries thus reduced in size and for determination of the effect of irrigation of such reduced entries upon the ground water supply in the area.

Harold Danekas et al., A-28622 (Dec. 5, 1962)

The rejection of desert land and enlarged homestead applications will not be disturbed where the appellants have not shown with positive and substantial evidence error in the classification of the lands for retention in a public land management area rather than for agricultural development.

Annette Murphy et al., A-29346 etc. (Dec. 10, 1962)

CULTIVATION AND RECLAMATION

A desert land entry is properly canceled as to that portion of the entry for which the final proof shows only a plan to utilize a portable sprinkler system, and for which there is no showing that the entryman has a portable system which can actually apply water to the 240 acres as soon as the land is ready for cultivation.

Clinton C. Douglass, Jr., A-28961 (Sept. 20, 1962)

DESERT LAND ENTRY--Continued

EXTENSION OF TIME

It is proper to reject applications for extensions of desert land entries where the entrywomen do not show that their failure to reclaim the land within the prescribed four-year period is due, without fault on their part, to unavoidable delay in the construction of irrigating works intended to convey water to the entered lands, the record showing that they relied entirely upon others to do the necessary work.

LaDean Butler and Ellen R. Butler, A-28673 (Feb. 7, 1962)

An extension of time for the submission of final proof of the reclamation and cultivation of a desert land entry is properly rejected under a statute requiring a showing of an unavoidable delay in the construction of irrigation works without fault of the entryman when the only reason shown is that the well driller selected by the entryman became ill and did not complete his contract to drill a well in the first year of the four-year life of the entry.

Cruz R. Alvarez, A-28947 (Aug. 6, 1962)

An extension of time for the submission of final proof of the reclamation and cultivation of a desert land entry is properly rejected when the only reason given by the entryman for failure to complete reclamation of the entry during the life of the entry and two previous extensions is that he had encountered a difficult rock formation which had delayed him in completing a well and it appears that he had commenced drilling through the formation during the third year of the entry and had been engaged in drilling through it ever since.

James M. Broska, A-29058 (Oct. 30, 1962)

An application for extension of time for submission of final proof of the reclamation and cultivation of a desert land entry is properly denied when the applicant fails to show that until shortly before the expiration of the statutory life of the entry he made any effort to have a well drilled on his entry and that completion of the well within the life of the entry was unavoidably delayed through no fault on his part.

Trinidad Alba, A-29061 (Oct. 30, 1962)

DESERT LAND ENTRY--Continued

EXTENSION OF TIME--Continued

To be entitled to an initial extension of a desert land entry the entryman must show that there was an unavoidable delay in the construction of the irrigating works to convey water to the land which was not due to his fault and could not have been readily foreseeable; a mere showing of reliance on relatives who were not able to do the work timely and of financial difficulties is not adequate to warrant an extension.

Mamie C. Tripp, A-29070 (Nov. 6, 1962)

The departmental regulation allowing 90 days after the end of the statutory life of a desert land entry for submission of final proof on the entry does not permit the performance of the necessary reclamation and cultivation after the life of the entry so that, when it is apparent at the end of the life of an entry that the necessary compliance with the law which will enable an entryman to submit acceptable final proof has not been accomplished, it is not necessary to allow the entryman 90 days to attempt the impossible.

Bessie Brown et al., A-29100 (Dec. 10, 1962)

LANDS SUBJECT TO

Public land appropriated as a materials site to be used in federally-aided state highway construction is not subject to entry under the desert land law and an application for desert land entry on such land is properly rejected.

Lorene May Johnson et al., A-28714 (July 27, 1962)

Vacant unentered public land within an irrigation district which has been designated under the Smith Act (act of August 11, 1916) may thereafter be included in a reclamation withdrawal, and when so withdrawn the land is not subject to entry under the Desert Land Act.

Elizabeth Holmes MacDonald, Hugh John MacDonald, A-27711 (Oct. 30, 1962) 69 I. D. 181

DESERT LAND ENTRY--Continued

PROOF

Where a desert land entryman completes a well on the last day of an extension of time allowed for that purpose and files final proof sufficient on its face within 90 days thereafter, it is erroneous to cancel the entry on the ground that the final proof was filed too late.

Lois L. Pollard, A-29007 (Aug. 10, 1962)

A desert land entry is properly canceled as to that portion of the entry for which the final proof shows only a plan to utilize a portable sprinkler system, and for which there is no showing that the entryman has a portable system which can actually apply water to the 240 acres as soon as the land is ready for cultivation.

Clinton C. Douglass, Jr., A-28961 (Sept. 20, 1962)

When final proof was submitted more than 90 days after the termination of the extended life of a desert land entry and it is indicated that the cultivation and reclamation requirements of the desert land act may not have been met during the statutory life of the entry, the case will nonetheless be remanded to the land office for a determination of the adequacy of the proof and the justification for acceptance of the proof pursuant to the act of September 20, 1922, where it appears that similar proof was accepted and patent issued to an adjoining desert land entry where all the facts appear to be substantially identical.

Joe Ann Chatham, A-29024 (Oct. 22, 1962)

WATER RIGHTS

Waiver by the Department of the requirement for the showing of a water right with applications for desert land entry in Nevada removes failure to file such a showing as a ground for the rejection of a desert land application filed prior to the waiver and pending on the date of the waiver.

Bernice B. Crooks et al., A-28698 (Sept. 24, 1962)

Waiver by the Department of the requirement for the showing of a water right with applications for desert land entry in Nevada removes failure to file such a showing as a ground for the rejection of a desert land application filed prior to the waiver and pending on the date of the waiver.

Harold Danekas et al., A-28622 (Dec. 5, 1962)

ENLARGED HOMESTEADS

GENERALLY

An application for a second extension of 6 months to establish residence on a homestead entry is properly rejected and the entry must be cancelled if the entryman fails to establish residence within 12 months after the allowance of the entry.

Trudie M. Ingram, A-28837 (Aug. 6, 1962)

CANCELLATION

An application for a second extension of 6 months to establish residence on a homestead entry is properly rejected and the entry must be cancelled if the entryman fails to establish residence within 12 months after the allowance of the entry.

Trudie M. Ingram, A-28837 (Aug. 6, 1962)

CLASSIFICATION

An application for enlarged homestead entry is properly rejected if it encompasses insufficient tillable land to meet the requirements of an economic dry-farm unit.

Joe L. Reed, A-28537 (Feb. 9, 1962)

An application for enlarged homestead entry is properly rejected when the land applied for has been classified as unsuitable for agricultural development and the applicant presents no evidence which requires a change in such classification.

Joseph V. Svatonsky, A-28794 (July 12, 1962)

The rejection of desert land and enlarged homestead applications will not be disturbed where the appellants have not shown with positive and substantial evidence error in the classification of the lands for retention in a public land management area rather than for agricultural development.

Annette Murphy et al., A-29346 etc. (Dec. 10, 1962)

LANDS SUBJECT TO

The Enlarged Homestead Act is applicable only to nonirrigable lands which are suitable for dry farming.

Annette Murphy et al., A-29346 etc. (Dec. 10, 1962)

EQUITABLE ADJUDICATION

The fact that a homestead entryman whose entry was under contest may not have met the cultivation requirements because of erroneous advice from the land office that the contest suspended the necessity of cultivation during pendency of the contest does not entitle him to relief by equitable adjudication since the failure to cultivate was due to an error of law.

Morris Killen v. Hubert Lee Davidson, Jr., A-28871 (Aug. 8, 1962)

Where a Pittman Act permittee has not substantially complied with the requirements of the applicable regulation for the raising of a crop during the 2 or 4-year term of his permit, he is not entitled to equitable adjudication of his case.

Richard B. Washburn, A-28939 (Aug. 10, 1962)

The Bureau of Land Management properly denies equitable adjudication to desert land final proof when substantial compliance with the law has not been shown or any attempt made to show that the compliance accomplished was defective only because of ignorance, mistake, or obstacle over which the entryman had no control.

George Arnold Jurn, A-28948 (Aug. 16, 1962)

When final proof was submitted more than 90 days after the termination of the extended life of a desert land entry and it is indicated that the cultivation and reclamation requirements of the desert land act may not have been met during the statutory life of the entry, the case will nonetheless be remanded to the land office for a determination of the adequacy of the proof and the justification for acceptance of the proof pursuant to the act of September 20, 1922, where it appears that similar proof was accepted and patent issued to an adjoining desert land entry where all the facts appear to be substantially identical.

Joe Ann Chatham, A-29024 (Oct. 22, 1962)

FEDERAL EMPLOYEES AND OFFICERS

AUTHORITY TO BIND GOVERNMENT

The Department is required to refuse to record scrip offered for recording more than three years after the end of the period specified by the statute which required recording; erroneous information by a land office as to the necessity for recording or an erroneous refusal by the land office to accept scrip for recording, which is not appealed from, will not permit acceptance of the scrip for recording after the statutory period for filing has expired.

M. B. Waldron, A-28703 (Jan. 31, 1962)

A small tract application is properly rejected upon a determination that the land should be disposed of under a prior state exchange application; the small tract applicant can gain no right to the land because he may have been misinformed by an employee of the Bureau of Land Management that the land was not subject to any prior commitment at the time when he filed his application.

Dr. John R. Herring, A-28905 (Sept. 4, 1962)

An applicant for lease of a small tract of public land can gain no right to a lease of any specific tract of land in reliance on the assurance of a land office employee that the land will be subdivided so that he can lease a tract having the precise boundaries of the tract which he desires because information, opinions or promises given by the land office cannot operate to vest in an applicant for public land any right not authorized by law or the applicable regulation.

Ralph J. Cahill et al., A-28777 (Sept. 20, 1962)

FISH AND WILDLIFE COORDINATION ACT

GENERALLY

The Fish and Wildlife Coordination Act contains authority for the acquisition by agencies constructing water-resource development projects of lands for fish and wildlife conservation purposes in connection with projects not substantially completed as of the date of enactment of the Fish and Wildlife Coordination Act.

Authority for the Acquisition of Lands for Fish and Wildlife Conservation Purposes at Federal Water-Resource Development Projects Authorized Prior to the Date of Enactment of the Fish and Wildlife Coordination Act, M-36643 (Dec. 18, 1962) 69 I. D. 224

GRAZING AND GRAZING LANDS

An applicant for desert land entry upon public land upon which authorized range users have placed permanent improvements is properly required to compensate the range users for such improvements as a condition to allowance of the entry.

Una D. Pidcoe, A-29068 (Nov. 6, 1962)

GRAZING LEASES

APPORTIONMENT OF LAND

Where land available for leasing under section 15 of the Taylor Grazing Act is apportioned among conflicting applicants on the basis of their respective preference rights and needs, a decision making such an award will not be disturbed.

Hamilton H. Fox, A-28882 (May 24, 1962)

GRAZING PERMITS AND LICENSES

GENERALLY

The presence of grazing animals on the federal range before the commencement of the licensed period or in greater numbers than the license allows constitutes trespass for which the licensee is responsible in damages computed on the basis of the reasonable value of the forage consumed in trespass.

Vaughn Stringer, Stringer and Fine, Fine Sheep Company, A-28859 (May 18, 1962)

Where an applicant for a transfer of grazing privileges is a lessee of base property whose livestock operations did not establish the dependency by use or priority of the leased lands, the owner of the lands must consent to the transfer and in the absence of such consent, the application to transfer is properly rejected.

Salvador Urrutia Southern Pacific Company, A-28720 (July 26, 1962)

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

The grazing of sheep in an area of intermingled unfenced public and private lands at a time not permitted by the license issued to a sheep owner constitutes trespass on the public lands for which he is answerable in damages.

Nick Chournos, A-29040 (Nov. 6, 1962)

APPEALS

As the Federal Range Code requires that notice of intention to appeal to the Director of the Bureau of Land Management from a decision of a hearing examiner be filed with the hearing examiner within 10 days after receipt by the appellant of the hearing examiner's decision, it is proper for the Director to dismiss an appeal to him when the notice of intention is not filed at all, even though the appellant subsequently files timely the appeal and brief required by another provision of the Range Code.

John Stringer, A-28858 (Feb. 19, 1962)

An appeal from an award of grazing privileges is properly dismissed where it involves the same issues that were adjudicated in the prior year on an application for grazing privileges in that year.

Frank Olson, A-28843 (July 26, 1962)

An appeal to a hearing examiner from a district manager's denial of an application for grazing privileges may be dismissed where the purported errors in the decision from which the appeal is taken are not clearly and concisely stated.

Nick Chournos, A-28814 (Sept. 10, 1962)

As the Federal Range Code for Grazing Districts requires that notice of intention to appeal to the Director of the Bureau of Land Management from a decision of a hearing examiner must be filed within 10 days after the receipt of the hearing examiner's decision by the appellant, it is proper for the Director to dismiss an appeal to him when the notice of intention to appeal was filed after the 10-day period had elapsed or was not filed at all.

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

Service of a decision by a hearing examiner in a grazing case upon an attorney of record is deemed to be service of the decision upon the person whom the attorney represents.

Philip Coyne et al., A-29539, A-29648 (Sept. 21, 1962)

A decision of the district manager apportioning a reduction of the grazing privileges occasioned by withdrawal of land from the administration of the Bureau of Land Management and fixing separate areas of use for two persons using the area affected by the withdrawal, one of whom has obtained his grazing privileges by purchase from the other, from which decision neither party perfects an appeal will not be considered on appeal by the purchaser from subsequent decisions granting him grazing privileges in accord with the former unappealed decision.

Owen Ault et al., A-29073 (Nov. 20, 1962)

APPORTIONMENT OF THE FEDERAL RANGE

An applicant has no right to the use of a particular area of the federal range so long as his exclusion from the area he desires is not so arbitrary or capricious as to render valueless his privately owned lands and improvements or to seriously endanger the possibility of his continuing in the livestock business.

The determination of the season of use of a portion of the federal range is within the discretion of the local officials, but it must be neither arbitrary nor capricious and will be changed if it is shown to be based on insufficient or unreliable evidence.

George C. West, A-28862 (Aug. 10, 1962)

An applicant has no right to the use of a particular area of the federal range so long as his exclusion from the area he desires is not so arbitrary or capricious as to render valueless his privately owned lands and improvements or to seriously endanger the possibility of his continuing in the livestock business.

Where the area allotted to a licensee is otherwise proper, the fact that it does not include a well in which he asserts a vested right does not constitute an impairment or diminution of his right

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE --Continued

to the possession and use of the water in violation of section 3 of the Taylor Grazing Act.

John Manzonie Estate and Adellie Manzonie, A-28996 (Oct. 4, 1962)

BASE PROPERTY (LAND)

Generally

Where during the priority period the Federal range was used for grazing livestock of an applicant for grazing privileges for a six-month period during the year, and there is no evidence that such use during the priority period was improper, the six-month period may be used in determining the extent of the class 1 qualification of the base property of such applicant even though the proper season of use of the Federal range in the unit has been established as five months for the purpose of awarding current grazing privileges.

Ethel Cowgill Rayburn, et al., A-28866 (Sept. 6, 1962)

Commensurability

The commensurability rating of base property limits the extent of class 1 grazing privileges where it is less than the priority of use established on the Federal range during the priority period.

Ethel Cowgill Rayburn, et al., A-28866 (Sept. 6, 1962)

CANCELLATION AND REDUCTIONS

Where, in order to reach the carrying capacity of the Federal range, a 24% reduction in grazing use is imposed on all licensees and permittees on an equal percentage basis in accordance with the range code and, in addition, a further reduction in use is also imposed on one licensee, the basis and authority for the further reduction should be set forth in a notice to the licensee, as required by the range code.

Lawrence Edwards, A-28991 (June 13, 1962) 69 I.D. 95

GRAZING PERMITS AND LICENSES--Continued

FEDERAL RANGE CODE

As the Federal Range Code for Grazing Districts requires that notice of intention to appeal to the Director of the Bureau of Land Management from a decision of a hearing examiner must be filed within 10 days after the receipt of the hearing examiner's decision by the appellant, it is proper for the Director to dismiss an appeal to him when the notice of intention to appeal was filed after the 10-day period had elapsed or was not filed at all.

Philip Coyne et al., A-29539, A-29648 (Sept. 21, 1962)

HEARINGS

A hearing on the question of whether a reduction in grazing privileges under a license permitting use of the Federal range was made in accordance with the range code is subject to the provisions of the Administrative Procedure Act, and in determining whether a licensee's appeal from a decision reducing grazing privileges should be dismissed, the whole record must be considered, and not merely the licensee's testimony and papers in support of his appeal.

Lawrence Edwards, A-28991 (June 13, 1962) 69 I. D. 95

HELIUM

Section 4 of the Helium Act Amendments of September 13, 1960 (74 Stat. 920, 50 U.S.C. 167b) requires that patents on inventions resulting from Government-financed research and development work under the Act be available to the general public without royalty or other restriction.

Section 4 of the Helium Act Amendments of September 13, 1960 (74 Stat. 920, 50 U.S.C. 167b) requires the Secretary to take steps to assure that background patents essential to the practice of patents or the use of processes resulting from research and development

HELIUM--Continued

contracts issued under the Act be available to the general public on reasonable terms.

Patent Requirements of the Coal Research Act, Saline Water Conversion Act and Helium Act, M-36637 (May 7, 1962) 69 I. D. 54

HOMESTEADS (ORDINARY)

GENERALLY

The fact that a homestead entryman whose entry was under contest may not have met the cultivation requirements because of erroneous advice from the land office that the contest suspended the necessity of cultivation during pendency of the contest does not entitle him to relief by equitable adjudication since the failure to cultivate was due to an error of law.

Morris Killen v. Hubert Lee Davidson, Jr., A-28871 (Aug. 8, 1962)

APPLICATIONS

An applicant for homestead entry need not make a satisfactory showing that the land sought to be entered is susceptible of sucessful cultivation by irrigation and need not furnish evidence of a water right and plans of irrigation until it is established that the land is desert in character and suitable for the cultivation of agricultural crops.

Ella L. Bittner, A-28783 (Jan. 16, 1962)

Where an application to make homestead entry is rejected and where, after filing a timely notice of appeal, the applicant moves for leave to amend her application and requests additional time within which to submit a statement of reasons in support of the appeal, the motion has the effect of making the appeal moot and the matter will be remanded to the Bureau of Land Management for consideration of the request to amend, and no extension of time within which to submit a statement of reasons will be granted.

Peggy M. Kater, A-29840 (Dec. 27, 1962)

HOMESTEADS (ORDINARY)--Continued

CANCELLATION OF ENTRY

A homestead entry inadvertently allowed for land included within an existing entry is properly canceled because the land is unavailable for entry so long as the first entry remains of record.

Sam Fathol McGee, A-29031 (July 17, 1962)

A homestead entry is properly canceled when the evidence adduced in a contest against it shows that compliance with the cultivation requirements of the homestead law was not accomplished within the life of the entry; the existence of a contest against a homestead entry does not suspend the entry while the contest is pending and thus permit compliance with the requirements for perfection of an entry beyond the 5-year life of the entry.

Morris Killen v. Hubert Lee Davidson, Jr., A-28871 (Aug. 8, 1962)

A homestead entry is properly canceled when it is found that the entryman did not cultivate 1/16 of the entry in the second year of the entry and 1/8 in the third year and thereafter until final proof was submitted.

United States v. Charles E. Stewart, A-28966 (Sept. 25, 1962)

Where an entryman who is not entitled to credit for military service does not satisfactorily cultivate the required acreage of his homestead entry during the second year of the entry, his entry is subject to cancellation for failure to meet the cultivation requirements.

John A. Bartel, A-29664 (Oct. 11, 1962)

Where a homestead entryman, during the period allowed to establish residence on the entry, merely spent a few days alone on the entry while on leave from his employment elsewhere, without intending at that time to make a home for himself and his family to the exclusion of a home elsewhere, he has not established the residence required of an entryman within six months (or one year) after allowance of the entry, and his entry is properly canceled.

Pat Fricks v. John L. Giuchici, A-29088 (Nov. 8, 1962)

HOMESTEADS (ORDINARY)--Continued

CLASSIFICATION

Land in the vicinity of other timbered land with which it comprises a forest management unit supporting a substantial stand of ponderosa pine and other timber is more valuable for timber production than for agriculture and is properly classified as not suitable for homestead entry.

Thomas L. Browning, A-28782 (Apr. 3, 1962)

It is proper to classify as unsuitable for homestead purposes land that is lacking in soil suitable for cultivation and a feasible supply of irrigation water.

Fred L. Bearden, A-28971 (May 28, 1962)

Where an application for homestead entry has been rejected for land which the Bureau of Land Management has refused to classify as suitable for homestead entry for want of any evidence of the availability of an adequate supply of irrigation water, and on appeal the appellant asserts on the basis of test wells drilled on the land that adequate water exists, the case will be remanded for further consideration in light of such evidence as the appellant may furnish as to the results of the test drilling and as to his right to appropriate the underground water revealed by the drilling.

John T. Washburn, A-28784 (June 29, 1962)

An application for homestead entry is properly rejected when the physical aspects of the land indicate the improbability of successful cultivation on the land and the danger of erosion to surrounding lands.

M. Faye Palmer, A-28847 (June 29, 1962)

Homestead applications for Oregon and California railroad grant lands are properly rejected when the evidence indicates that the lands are more suitable for timber production than for cultivated crop production.

Warren H. Goss, Neil N. Sumner, A-28834 (Sept. 19, 1962)

HOMESTEADS (ORDINARY)--Continued

CLASSIFICATION--Continued

An application for homestead entry is properly rejected for land that has been classified as unsuitable for agricultural crops because of steep slope, high elevation, short growing season and shallow, rocky soil and because it has substantial value for timber production, wildlife management, recreation and watershed protection where the appellant submits no evidence tending to show that the classification was erroneous.

Lewis W. Shamel et al., A-28943, A-28944, (Sept. 20, 1962)

When lands applied for under the homestead law are classified as unsuitable for homestead purposes because of rough terrain and poor soil, the classification will not be disturbed in the absence of substantial, positive evidence that it is erroneous.

Walter G. Allen, Jr., A-28921 (Sept. 21, 1962)

The classification of land described in an application for homestead entry as unsuitable for agricultural development because the anticipated monetary returns from such development could not reasonably be expected to meet the income needs of a farm family is properly sustained on appeal when the applicant fails to furnish substantial, positive evidence that the classification is erroneous.

Paul Edward Mulvaney, A-28828 (Oct. 10, 1962)

A homestead application is properly rejected for land that has rough and broken topography and poor soils so that it is marginal for agricultural use.

J. J. Williams, Russel W. Button, A-29364 (Dec. 10, 1962)

CONTESTS

A homestead entry is properly canceled when the evidence adduced in a contest against it shows that compliance with the cultivation requirements of the homestead law was not accomplished within the life of the entry; the existence of a contest against a homestead entry does not suspend the entry while the contest is pending and thus permit compliance with the requirements for perfection of an entry beyond the 5-year life of the entry.

Morris Killen v. Hubert Lee Davidson, Jr., A-28871 (Aug. 8, 1962)

HOMESTEADS (ORDINARY)--Continued

CULTIVATION

A homestead entry is properly canceled when the evidence adduced in a contest against it shows that compliance with the cultivation requirements of the homestead law was not accomplished within the life of the entry; the existence of a contest against a homestead entry does not suspend the entry while the contest is pending and thus permit compliance with the requirements for perfection of an entry beyond the 5-year life of the entry.

Morris Killen v. Hubert Lee Davidson, Jr., A-28871 (Aug. 8, 1962)

The breaking, planting or seeding and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results; if the soil is arid or semiarid, cultivation which will meet the cultivation requirement of the homestead law must include the application of such amounts of water as may reasonably be required to produce a crop.

United States v. Charles E. Stewart, A-28966 (Sept. 25, 1962)

Commuted homestead final proof which shows only that purported cultivation for the second year was done by clearing, discing and seeding frozen land during midwinter months in Alaska is properly rejected as failing to show on its face bona fide cultivation of the land, as discing and seeding can be done satisfactorily only during the proper season of the year.

Where an entryman who is not entitled to credit for military service does not satisfactorily cultivate the required acreage of his homestead entry during the second year of the entry, his entry is subject to cancellation for failure to meet the cultivation requirements.

John A. Bartel, A-29664 (Oct. 11, 1962)

Final proof for a homestead entry in Alaska which on its face shows that the entryman did not comply with the cultivation requirements of the homestead laws is properly rejected and the entry properly canceled.

Frederick N. Van Horn, A-29081 (Nov. 20, 1962)

HOMESTEADS (ORDINARY)--Continued

FINAL PROOF

Commuted homestead final proof which shows only that purported cultivation for the second year was done by clearing, discing and seeding frozen land during midwinter months in Alaska is properly rejected as failing to show on its face bona fide cultivation of the land, as discing and seeding can be done satisfactorily only during the proper season of the year.

John A. Bartel, A-29664 (Oct. 11, 1962)

LANDS SUBJECT TO

A homestead application is properly rejected for land set aside as a public water reserve.

Amy B. Croft, A-28855 (June 26, 1962)

MINERAL RESERVATION

Where a regulation is amended to remove the requirement that entrymen on or claimants of lands which are determined to be prospectively valuable for oil or gas after entry but before the entry or claim has been perfected must file a waiver of rights to the oil and gas for which the land has been found prospectively valuable and to substitute a different procedure in such cases, the provisions of the amended regulation will be applied to claimants and entrymen who have appealed to the Secretary from the demand made under the former regulation that they file a waiver, if there are no adverse rights or if the interest of the United States will not be prejudiced thereby.

Before the amendment of 43 CFR 102.22 on December 12, 1961, where land covered by a homestead entry or application was found to be prospectively valuable for oil and gas at any time prior to the submission of satisfactory final proof, it was proper to require the entryman to consent to the imposition of a reservation of the oil and gas to the United States, or apply for a reclassification of the land.

Where prior to the amendment of 43 CFR 102.22 on December 12, 1961, lands in a homestead entry in Kenai Peninsula, Alaska, were classified by the Geological Survey as

HOMESTEADS (ORDINARY)--Continued

MINERAL RESERVATION--Continued

prospectively valuable for oil and gas before the entryman had completed requirements for earning patent under the homestead laws, the entryman was properly required to file a mineral waiver and consent to patenting of the land with a reservation to the United States of the oil and gas deposits in the land together with the right to prospect for, mine, and remove the reserved minerals in accordance with the act of March 8, 1922, as amended, if the lands were not subject to patenting under the act of September 14, 1960.

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962) 69 I.D. 71

RESIDENCE

Evidence which shows that a homestead entryman made only a few week-end and holiday visits to the entry, which was not equipped for residence except for a small trailer house and electric power, while he maintained a home and his business elsewhere shows a failure of the act of establishing residence on the entry coincident with an intent to make the entry his home to the exclusion of a home elsewhere and the entry is properly canceled for failure to establish residence within the time allowed by the homestead law.

Maurice Murphy v. Dee R. Hunter, A-28883 (Aug. 16, 1962)

Where a homestead entryman, during the period allowed to establish residence on the entry, merely spent a few days alone on the entry while on leave from his employment elsewhere, without intending at that time to make a home for himself and his family to the exclusion of a home elsewhere, he has not established the residence required of an entryman within six months (or one year) after allowance of the entry, and his entry is properly canceled.

Pat Fricks v. John L. Giuchici, A-29088 (Nov. 8, 1962)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

In a choice between two competing applicants for Indian allotment of public land which had been occupied for more than 50 years by their Indian mother and her family under the assumption that it had been properly allotted to their donor, it is proper to allot the portion of the land upon which the improvements are located to the applicant who evidences his willingness to permit his mother and her children to live upon the land with him.

Irene Mitchell Pallin, A-28766 (Sept. 21, 1962)

LANDS SUBJECT TO

Where applicants for an Indian allotment were not born until after the land was withdrawn from that and other disposition, they cannot base a claim to an allotment upon settlement made while the land was withdrawn.

John David Smith et al., A-28829 (Sept. 17, 1962)

SETTLEMENT

Where an applicant for an Indian allotment of public domain asserts that he settled on the land applied for long before it was withdrawn, that he lived on the land for years before he moved elsewhere, and that he has continued to maintain a home on the land and to use it for grazing, but an investigation conducted by the Bureau reached contrary conclusions, the conflict is best resolved by holding a hearing to determine whether the applicant settled on the land and when and what his relationship to the land has been.

Where applicants for an Indian allotment were not born until after the land was withdrawn from that and other disposition, they cannot base a claim to an allotment upon settlement made while the land was withdrawn.

John David Smith et al., A-28829 (Sept. 17, 1962)

INDIAN LANDS

ACQUIRED LANDS

Where an Indian acquires lands subject to the restriction that such lands cannot be sold or alienated without the consent of the Secretary of the Interior, pursuant to those terms in the deed and the pertinent Departmental regulations, an attempted sale of the lands in State Court guardianship proceedings would pass no title without the required approval or removal of restrictions by Departmental officials.

Where Indian lands are sold in violation or apparent disregard of restrictions placed on the lands when acquired, the Government would not be required, as a prerequisite to enforcing the restrictions or to cancel the sale, to return any consideration paid for the lands.

Raymond F. Gray, IA-1110 (May 7, 1962) 69 I.D. 49

Lands acquired for or on behalf of an Indian and made subject to restrictions against alienation without the approval of the Secretary of the Interior or his authorized representative constitute, upon the Indian's death, a part of his restricted estate subject to the Department's probate jurisdiction.

Estate of Harry Colby, IA-726 (June 29, 1962) 69 I.D. 113

ALLOTMENTS

Alienation

Executory lease agreements with competent Crow Indians which purport to cancel existing leases between the same parties as of a date one year or eighteen months in the future and to take effect themselves as five year leases at that future date violate the Act of March 15, 1948 (62 Stat. 80) and are void.

Any leasing agreement or combination of agreements affecting a competent Crow allotment held in trust by the United States which does not allow the Indian to negotiate freely for a new lease of the property at least once every five years violates the Act of March 15, 1948 (62 Stat. 80) and is void.

Leasing of Crow Indian Lands, M-36644 (November 29, 1962) 69 I.D. 203

INDIAN LANDS --Continued

CEDED LANDS

Off-reservation fishing rights guaranteed by treaties with Indian tribes are tribal rights which may be regulated by the tribes, and a tribal member who does not fish in conformity with tribal regulations would not have a treaty-right defense to a State prosecution for violation of State conservation laws.

Off-Reservation Fishing Rights of Indians in Washington and Oregon, M-36638 (May 16, 1962) 69 I.D. 68

The vacant, unappropriated and undisposed of portions of the land ceded to the United States by the San Carlos Indian Tribe by agreement of February 25, 1896 (29 Stat. 360) and commonly known as the "San Carlos Mineral Strip" are "surplus" land under Section 3 of the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 463(a)) and the Secretary of the Interior has the discretionary authority to restore such land to tribal ownership.

Authority of the Secretary of the Interior to Restore Lands in San Carlos Mineral Strip to Tribal Ownership, M-36599 (Nov. 28, 1962) 69 I.D. 195

DESCENT AND DISTRIBUTION

Generally

Lands acquired for or on behalf of an Indian and made subject to restrictions against alienation without the approval of the Secretary of the Interior or his authorized representative constitute, upon the Indian's death, a part of his restricted estate subject to the Department's probate jurisdiction.

Estate of Harry Colby, IA-726 (June 29, 1962) 69 I.D. 113

An Order of an Examiner of Inheritance allowing an attorney's fee pursuant to 25 CFR 15.26 will not be reversed on appeal absent a clear showing that the fee allowed was unreasonable based on the services performed, the trust or restricted status of the property involved, and the protection of the rights of all interested parties, or a clear showing that the allowance of such fee constitutes an

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Generally--Continued

unreasonable exercise of the Examiner's authority.

Estate of John High Eagle, IA-1182 (Aug. 22, 1962)

Intestate Succession

Illegitimate Indian children are permitted to represent their deceased fathers and inherit in the estates of the father's kindred because they were made the legitimate issue of their fathers by section 5 of the act of February 28, 1891 (26 Stat. 795, 25 U.S.C. 371).

Estate of Harry Colby, IA-726 (June 29, 1962) 69 I.D. 113

Wills

Under the provisions of the Act of April 18, 1912 (37 Stat. 86), the approval by the Secretary of the Interior of an Osage Indian's will which contains a revocation clause shall effectively revoke prior wills of the testator even though the approved will fails as a dispositive instrument by operation of law because of the testator's subsequent marriage.

Estate of Marjorie May Copperfield Unallotted Osage Indian (Restricted), IA-1293 (Sept. 14, 1962) 69 I.D. 143

INDIVIDUAL RIGHTS IN TRIBAL PROPERTY

Off-reservation fishing rights guaranteed by treaties with Indian tribes are tribal rights which may be regulated by the tribes, and a tribal member who does not fish in conformity with tribal regulations would not have a treaty-right defense to a State prosecution for violation of State conservation laws.

Off-Reservation Fishing Rights of Indians in Washington and Oregon, M-36638 (May 16, 1962) 69 I.D. 68

INDIAN LANDS--Continued

LEASES AND PERMITS

Generally

Executory lease agreements with competent Crow Indians which purport to cancel existing leases between the same parties as of a date one year or eighteen months in the future and to take effect themselves as five-year leases at that future date violate the Act of March 15, 1948 (62 Stat. 80) and are void.

Any leasing agreement or combination of agreements affecting a competent Crow allotment held in trust by the United States which does not allow the Indian to negotiate freely for a new lease of the property at least once every five years violates the Act of March 15, 1948 (62 Stat. 80) and is void.

Leasing of Crow Indian Lands, M-36644 (November 29, 1962) 69 I. D. 203

INDIAN REORGANIZATION ACT

The vacant, unappropriated and undisposed of portions of the land ceded to the United States by the San Carlos Indian Tribe by agreement of February 25, 1896 (29 Stat. 360) and commonly known as the "San Carlos Mineral Strip" are "surplus" land under Section 3 of the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 463(a)) and the Secretary of the Interior has the discretionary authority to restore such land to tribal ownership.

Authority of the Secretary of the Interior to Restore Lands in San Carlos Mineral Strip to Tribal Ownership, M-36599 (November 28, 1962) 69 I. D. 195

INDIAN TRIBES

GENERALLY

Off-reservation fishing rights guaranteed by treaties with Indian tribes are tribal rights

INDIAN TRIBES--Continued

GENERALLY--Continued

which may be regulated by the tribes, and a tribal member who does not fish in conformity with tribal regulations would not have a treaty-right defense to a State prosecution for violation of State conservation laws.

Off-Reservation Fishing Rights of Indians in Washington and Oregon, M-36638 (May 16, 1962) 69 I. D. 68

CONTRACTS

While the general rule is that contingent witness fee contracts are void as against public policy, such contracts between tribes and expert witnesses in connection with Indian claims litigation do not violate public policy where (1) the tribe's right to recovery has been established, (2) the impoverished condition of the tribe makes such a contract necessary to make the testimony available to the Commission, (3) the fee is in a fixed amount which is a small percentage of the reasonably anticipated recovery, and (4) the contingent nature of the contract is called to the attention of the Indian Claims Commission.

Contracts where the witness would testify on the issue of liability are not included in this ruling.

Validity of Contingent Fee Expert Witness Contracts in Indian Claims Litigation, M-36639 June 15, 1962

OKLAHOMA TRIBES

Under the provisions of the Act of April 18, 1912 (37 Stat. 86), the approval by the Secretary of the Interior of an Osage Indian's will which contains a revocation clause shall effectively revoke prior wills of the testator even though the approved will fails as a dispositive instrument by operation of law because of the testator's subsequent marriage.

Estate of Marjorie May Copperfield Unallotted Osage Indian (Restricted), IA-1293 (Sept. 14, 1962) 69 I. D. 143

INDIANS

DOMESTIC RELATIONS

A person of Indian descent, of 1/4 Indian blood, who is an enrolled member of an Indian Tribe and possessed of Indian trust land including his own allotment, and who is recognized by his tribe

INDIANS--Continued

DOMESTIC RELATIONS--Continued

and the Federal Government as an Indian, is validly married to a person of the Negro race, since the miscegenation statute of the state in which the marriage took place did not prohibit an Indian from marrying a Negro.

Estate of James Franklin Macer Crow Allottee No. 377, IA-858 (Apr. 24, 1962) 69 I. D. 35

Illegitimate Indian children are permitted to represent their deceased fathers and inherit in the estates of the father's kindred because they were made the legitimate issue of their fathers by section 5 of the act of February 28, 1891 (26 Stat. 795, 25 U.S.C. 371).

Estate of Harry Colby, IA-726 (June 29, 1962) 69 I.D. 113

PROBATE

Under the provisions of the Act of April 18, 1912 (37 Stat. 86), the approval by the Secretary of the Interior of an Osage Indian's will which contains a revocation clause shall effectively revoke prior wills of the testator even though the approved will fails as a dispositive instrument by operation of law because of the testator's subsequent marriage.

Estate of Marjorie May Copperfield Unallotted Osage Indian (Restricted), IA-1293 (Sept. 14, 1962) 69 I. D. 143

IRRIGATION CLAIMS

GENERALLY

Under Public Works Appropriation Acts, an award may be made only upon a showing that the damage was the direct result of non-tortious activities of employees of the Bureau of Reclamation.

Claims of Wilbur B. Cassady and Mary A. Cassady, and Farmers Insurance Group, TA-235 (Ir.) (Nov. 7, 1962) 69 I. D. 193

INJURY

Animals and Livestock

Damage caused by burrowing animals cannot be said to be the direct result of non-tortious activities of the Bureau of Reclamation.

Claims of Wilbur B. Cassady and Mary A. Cassady, and Farmers Insurance Group, TA-235 (Ir.) (Nov. 7, 1962) 69 I. D. 193

MINERAL LANDS

LEASES

When a request for relinquishment of a five-year lease for minerals in the Lake Mead recreation area is filed shortly after the beginning of the fourth lease year, the rental and minimum royalty payments that accrued and attached on the advent of the new lease year become a debt due the United States which cannot be waived.

Norman G. Snoreen, Benjamin R. Thornton, A-28742 (Aug. 15, 1962)

MINERAL RESERVATION

Where land within a desert land entry is reported to be prospectively valuable for oil and gas before the entryman submits final proof, it is proper to require the entryman to file consent to the reservation to the United States of the oil and gas deposits in the land or to contest the mineral classification of the land.

The mere filing of an application for relief under the act of February 14, 1934, does not vest in the applicant any such interest in the land as will prevent the imposition of a reservation to the United States of the oil and gas deposits in a desert land entry on which final proof has not been submitted.

C. D. Adams, on Behalf of the Heirs of John Q. Adams, A-28900 (Aug. 30, 1962)

NONMINERAL ENTRIES

Where a regulation is amended to remove the requirement that entrymen on or claimants of lands which are determined to be prospectively valuable for oil or gas after entry but before the entry or claim has been perfected must file a waiver of rights to the oil and gas for which the land has been found prospectively valuable and to substitute a different procedure in such cases, the provisions of the amended regulation will be applied to claimants and entrymen who have appealed to the Secretary from the demand made under the former regulation that they file a waiver, if there are no adverse rights or if the interest of the United States will not be prejudiced thereby.

The act of March 8, 1922, was an extension to the territory of Alaska of the principles of the earlier surface homestead acts which did not apply to Alaska.

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962) 69 I.D. 71

MINERAL LANDS--Continued

NONMINERAL ENTRIES--Continued

The mere filing of an application for relief under the act of February 14, 1934, does not vest in the applicant any such interest in the land as will prevent the imposition of a reservation to the United States of the oil and gas deposits in a desert land entry on which final proof has not been submitted.

C. D. Adams, on Behalf of the Heirs of John Q. Adams, A-28900 (Aug. 30, 1962)

Lands valuable for certain minerals which are locatable under the mining laws are not subject to public sale.

William W. Cheetham, A-29098 (Dec. 10, 1962)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

The Department adheres to its previous decision in Nettie M. Lewis et al., A-28535 (January 27, 1961), that there appears to be no requirement for approval by the Bureau of the Budget of stipulations required by the Forest Service as a condition to the issuance of acquired land oil and gas leases on national forest land.

Celia R. Kammerman, A-28827 (Aug. 3, 1962)

The Department adheres to its previous decisions in Nettie M. Lewis et al., A-28535 (January 27, 1961), and Celia R. Kammerman, A-28827 (August 3, 1962), that there appears to be no requirement for approval by the Bureau of the Budget of stipulations required by the Forest Service as a condition to the issuance of acquired land oil and gas leases on national forest land.

Jacob N. Wasserman, A-28880 (Sept. 21, 1962)

MINERAL LEASING ACT FOR ACQUIRED LANDS --Continued

CONSENT OF AGENCY

An oil and gas lease offer is properly rejected where the land applied for consists of accretion to land acquired by and under the jurisdiction of the Department of the Army and that Department does not consent to the issuance of a lease on the accreted lands because of its uncertainty as to whether title to the lands is in the United States or the State of Louisiana.

The California Company, A-28753 (July 30 1962)

Under the Mineral Leasing Act for Acquired Lands Lands, the Secretary of the Interior is not required to reject an offer to lease for oil and gas purposes land conveyed to a State in which the United States has reserved a fractional mineral interest because the offeror refuses to accept the terms announced by the State as the condition of its consent to the issuance of the lease; whether to lease or not to lease must be based upon a determination whether the best interests of the United States will be served thereby.

Merwin E. Liss, A-28896 (Oct. 10, 1962) 69 I. D. 171

LANDS SUBJECT TO

An offer to lease a mineral interest reserved in acquired land disposed of as surplus by the General Services Administration under the Federal Property and Administrative Services Act of 1949 is properly rejected as beyond the authority conferred upon the Secretary of the Interior by the Mineral Leasing Act for Acquired Lands.

Duncan Miller, A-28949 (Sept. 10, 1962)

MINING CLAIMS

GENERALLY

The United States has paramount title to unpatented mining claims and the Bureau of Land Management has authority in emergency

MINING CLAIMS--Continued

GENERALLY--Continued

situations to cut and remove, and dispose of by sale, diseased or insect-infested timber growing on an unpatented mining claim located before July 23, 1955, where such timber constitutes a threat to the health of nearby timber growing on BLM-administered lands either within or without the exterior boundaries of the claim.

Unpatented mining claims are subject to the paramount title of the United States which owns both the lands embraced within the claims and the timber thereon, and the mining claimants' rights therein are limited to use of the land and timber for mining purposes.

Emergency Salvage Operations On Unpatented Mining Claims, M-36636 (Apr. 5, 1962)

COMMON VARIETIES OF MINERALS

To satisfy the requirement for a discovery on a building stone claim located before July 23, 1955, it must be shown that the exposed materials, a common variety of stone, appearing within the limits of a claim could have been extracted, removed, and marketed at a profit prior to that date, and where such a showing is not made the mining claim is properly declared null and void.

United States v. Alfred Coleman, A-28557 (Mar. 27, 1962)

To satisfy the requirement for discovery on a placer mining claim located for building stone before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed and marketed at a profit prior to that date, and when such showing is not made the mining claim is properly declared null and void.

United States v. Joe H. York and Jemima York, A-28806 (Aug. 16, 1962)

To establish the validity of a mining claim which, in 1954, was located on account of deposits of a common variety of building stone, the mining claimant must show that on or before July 23, 1955, the stone was marketable at a profit, and if the validity of such a claim is not so established, the claim is subject to the limitations of section 4 of the act of July 23, 1955,

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

restricting the use of vegetative and other surface resources on the land covered by the claim.

United States v. Donald J. Morgan, A-28702 (Aug. 21, 1962)

To satisfy the requirement for discovery on a placer mining claim located for sand, gravel, or stone before July 23, 1955, it must be shown that the exposed materials appearing within the limits of the claim could have been extracted, removed and marketed at a profit prior to that date, and when such a showing is not made the mining claim is properly declared null and void.

United States v. Fisher Contracting Company, John T. Katsenes, Intervenor, A-28779 (Aug. 21, 1962)

Building stone suitable for construction purposes which is found in an extensive range of pleasing colors, has high compressive strength and light weight, but can be used only for the same purposes as other widely available but probably less desirable deposits of the same material, is a common variety of building stone and not locatable under the mining laws since its special characteristics do not give it a special, distinct value.

United States v. D. G. Ligier et al., A-29011 (Oct. 8, 1962)

CONTESTS

Mining claims are properly declared null and void where the contestee fails to file an answer denying the charges of invalidity contained in the contest complaint served upon him.

United States v. Henry Gilligan et al., A-28857 (Feb. 19, 1962)

In a contest against the validity of placer mining claims, based on lack of discovery of a valuable mineral, the claimants can prevail only on the strength of their evidence that affirmatively establishes a discovery and where they fail to establish the existence of

MINING CLAIMS--Continued

CONTESTS--Continued

a discovery by a preponderance of the evidence their claims are properly declared null and void.

United States v. George J. Patee et al., A-28731 (May 7, 1962)

A mining claim is properly declared null and void when a contest against the validity thereof is initiated and the contestees, although filing a motion to dismiss the complaint, fail to file an answer specifically meeting and responding to the allegations of the complaint within the period prescribed by the governing regulations. The allegations of the complaint will, in such instance, be taken as admitted.

Where a contest is brought against a mining claim as originally located and the contestees fail to answer, it is proper to hold the claim invalid but not as to land included in the claim by an amended location which was not described or referred to in the contest complaint.

United States v. Gifford Allen et al., A-28718 (July 26, 1962)

Where contestees fail to timely answer contest charges brought by the United States against the validity of a mining claim, the charges will be taken as admitted by the contestees and the claims declared null and void.

United States v. Ruben J. Garcia, et al., A-28889 (July 30, 1962)

A holding that the Government failed to make out a prima facie case against the validity of sand and gravel claims merely because its witnesses were not physically on the claims is erroneous where the testimony given by the Government's witnesses showed that they had observed the character of the land from roads bordering the claims, knew the general geology of the area, and knew of no demand for the materials observed to be present on the claims.

United States v. Fisher Contracting Company, John T. Katsenes, Intervenor, A-28779 (Aug. 21, 1962)

The issuance of a final certificate on a mining claim does not preclude the United States from inquiry into the validity of the claim at any time until patent is issued.

United States v. Ralph S. Atkinson, A-29028 (Sept. 11, 1962)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY

To satisfy the requirement for a discovery on a building stone claim located before July 23, 1955, it must be shown that the exposed materials, a common variety of stone, appearing within the limits of a claim could have been extracted, removed, and marketed at a profit prior to that date, and where such a showing is not made the mining claim is properly declared null and void.

United States v. Alfred Coleman, A-28557 (Mar. 27, 1962)

Where it is held that a valid discovery has been made on one 10-acre portion of a placer claim, each remaining 10-acre subdivision must be shown to be mineral in character.

United States v. Eleanor A. Gray et al., A-28710 (May 18, 1962)

A decision declaring mining claims null and void for lack of discovery is proper where evidence at a hearing supports the conclusion that there has not been a discovery of minerals of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in the development of the claims.

United States v. Arizona Exploration Company et al., A-28876 (June 22, 1962)

To sustain the validity of a mining claim it must be shown that the land is mineral in character and valuable for its mineral content at the time that its validity is questioned.

United States v. Humboldt Placer Mining Company and Del De Rosier, A-28754 (July 31, 1962)

The asserted right or interest of a holder of a mining claim located for a mineral that is leasable under the Mineral Leasing Act is properly held to be without effect or validity when in a proceeding held pursuant to section 7 of the act of August 13, 1954, it is determined that no discovery was made before February 25, 1920, when the Mineral Leasing Act was adopted, or that work leading to a discovery was not being diligently prosecuted at that time and thereafter until discovery was made within the boundaries of the claim.

Leoball Oil Company et al., A-28940 (Aug. 16, 1962)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

To establish the validity of a mining claim which, in 1954, was located on account of deposits of a common variety of building stone, the mining claimant must show that on or before July 23, 1955, the stone was marketable at a profit, and if the validity of such a claim is not so established, the claim is subject to the limitations of section 4 of the act of July 23, 1955, restricting the use of vegetative and other surface resources on the land covered by the claim.

United States v. Donald J. Morgan, A-28702 (Aug. 21, 1962)

To satisfy the requirement for discovery on a placer mining claim located for sand, gravel, or stone before July 23, 1955, it must be shown that the exposed materials appearing within the limits of the claim could have been extracted, removed and marketed at a profit prior to that date, and when such a showing is not made the mining claim is properly declared null and void.

United States v. Fisher Contracting Company, John T. Katsenes, Intervenor, A-28779 (Aug. 21 1962)

The issuance of a final certificate on a mining claim does not preclude the United States from inquiry into the validity of the claim at any time until patent is issued.

United States v. Ralph S. Atkinson, A-29028 (Sept. 11, 1962)

When a nonmetallic mineral is not of extremely wide occurrence and when a general demand for that mineral exists, it may be enough, instead of showing an actually existing market for the products of that particular mine, to show that a general market for the substance exists of a type which a reasonably prudent man would be justified in regarding as one in which he could dispose of those products.

Marketability Rule, M-36642 (Sept. 20, 1962) 69 I.D. 145

Where the date on which a mining claim was located as shown by a verified statement filed under the act of July 23, 1955, is a date when the land was within a first form reclamation withdrawal and so withdrawn from mining location, and after the verified statement is filed, evidence is submitted by the mining claimants tending to show that the claim was first located on a date when the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

land was open to mining entry, the Department will not declare the claim null and void for having been located on land withdrawn from mineral entry without a hearing on the question of the date on which the claim was located.

Mr. and Mrs. Ted R. Wagner, A-28989 (Oct. 30, 1962) 69 I.D. 186

Mining claims located on lands within a national forest after they have been appropriated by the United States for a public purpose are null and void ab initio; however, where the record is not clear as to the extent of the appropriation, which depends on the extent of the improvements and actual use and occupancy of the land by the Government, the factual issue should be resolved by a hearing.

Whether mining claimants have any valid property rights to unappropriated lands which are withdrawn for the purposes of a Federal agency subsequent to the filing of their mining locations depends upon whether the claims were perfected by a discovery thereon of a valuable mineral deposit prior to the segregative date of the withdrawal, which is the date that the receipt of the application for the withdrawal by the agency is noted upon the appropriate records of this Department.

A. J. Katches & Howard M. Brickel D/B/A Mid-Continent Exploration Co., A-29079 (Dec. 4, 1962)

DISCOVERY

Where it is shown in a proceeding conducted pursuant to section 5 of the Surface Resources Act that discovery has not been made on unpatented mining claims located prior to July 23, 1955, the claims may not be used, prior to the issuance of patents therefor, for other than mining purposes and the claims are subject to the limitations and restrictions imposed by section 4 of that act.

United States v. Kathryne Cragholm, United States v. Ralph Martin, A-28690 (Jan. 30, 1962)

MINING CLAIMS--Continued

DISCOVERY--Continued

To satisfy the requirement for a discovery on a building stone claim located before July 23, 1955, it must be shown that the exposed materials, a common variety of stone, appearing within the limits of a claim could have been extracted, removed, and marketed at a profit prior to that date, and where such a showing is not made the mining claim is properly declared null and void.

United States v. Alfred Coleman, A-28557 (Mar. 27, 1962)

A mining claim is properly declared null and void where representative samplings from the claim show insignificant mineral values on the claim.

Mere possession of a mining claim for 25 years does not dispense with the necessity for a discovery.

United States v. Essie M. Russell, A-28875 (Apr. 27, 1962)

In a contest against the validity of placer mining claims, based on lack of discovery of a valuable mineral, the claimants can prevail only on the strength of their evidence that affirmatively establishes a discovery and where they fail to establish the existence of a discovery by a preponderance of the evidence their claims are properly declared null and void.

United States v. George J. Patee et al., A-28731 (May 7, 1962)

Placer mining claims which do not contain an appreciable amount of the mineral salts for which the claims were located are properly held null and void.

Where the mineral salts for which a mining claim is located exist in sufficient quantity on a claim to make removal feasible and the product resulting from the solution of the salts in water can be sold at a profit, the claim is valid.

United States v. Eleanor A. Gray et al., A-28710 (May 18, 1962)

MINING CLAIMS--Continued

DISCOVERY--Continued

A decision declaring mining claims null and void for lack of discovery is proper where evidence at a hearing supports the conclusion that there has not been a discovery of minerals of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in the development of the claims.

United States v. Arizona Exploration Company et al., A-28876 (June 22, 1962)

A mere showing of minerals is insufficient to constitute a discovery under the mining laws.

A Government mineral examiner investigating a mining claim prior to a proceeding under the act of July 23, 1955, has no duty to test a claim for discovery beyond examining the discovery points made available by the mining claimant.

United States v. Spar Mining Company et al., A-28786 (July 30, 1962)

A discovery which will validate a mining claim requires a disclosure of mineral in such quantity and quality as to justify a reasonably prudent person in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. Humboldt Placer Mining Company and Del De Rosier, A-28754 (July 31, 1962)

The finding of mineralization in place within the limits of a mining claim which may induce a prudent person to undertake further exploration in the hope of uncovering greater values is not sufficient to constitute a discovery unless the mineralization exposed is sufficient to justify a person of ordinary prudence in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. Jessie Shackleford et al., A-28788 (Aug. 15, 1962)

To satisfy the requirement for discovery on a placer mining claim located for building stone before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed and marketed at a profit prior to that date, and

MINING CLAIMS--Continued

DISCOVERY--Continued

when such showing is not made the mining claim is properly declared null and void.

United States v. Joe H. York and Jemima York, A-28806 (Aug. 16, 1962)

To establish the validity of a mining claim which, in 1954, was located on account of deposits of a common variety of building stone, the mining claimant must show that on or before July 23, 1955, the stone was marketable at a profit, and if the validity of such a claim is not so established, the claim is subject to the limitations of section 4 of the act of July 23, 1955, restricting the use of vegetative and other surface resources on the land covered by the claim.

United States v. Donald J. Morgan, A-28702 (Aug. 21, 1962)

To satisfy the requirement for discovery on a placer mining claim located for sand, gravel, or stone before July 23, 1955, it must be shown that the exposed materials appearing within the limits of the claim could have been extracted, removed and marketed at a profit prior to that date, and when such a showing is not made the mining claim is properly declared null and void.

United States v. Fisher Contracting Company, John T. Katsenes, Intervenor, A-28779 (Aug. 21, 1962)

A decision declaring mining claims null and void is proper where the record supports the conclusion that there has not been a discovery of valuable minerals on any of the claims within the meaning of the mining laws which require that minerals be found of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. Wonder Mountain Mining Company, A-28936 (Sept. 11, 1962)

To prevail in a contest against a mining claim, the claimant must show a discovery of valuable mineral which justifies a person of ordinary prudence in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. Ben Fullingim and John Tinkle, A-28850 (Sept. 18, 1962)

MINING CLAIMS--Continued

DISCOVERY--Continued

A valid discovery under the mining laws requires more than a showing of small quantities of low-grade minerals on a mining claim. There must be shown a basis for a reasonable expectation that the minerals exposed on the claim will lead to minerals of greater value or that they exist in quantities which would cause a prudent man to expend his time and money in attempting to develop a paying mine.

United States v. C. R. Altman and Charles M. Russell, A-28787 (Sept. 19, 1962)

To satisfy the requirement for discovery on a mining claim located for a deposit of building stone which is locatable under the act of July 23, 1955, it must be shown that the stone within the claim could have been extracted, removed and marketed at a profit and when such showing is not made the mining claim is properly declared null and void for want of a discovery.

United States v. D. G. Ligier et al., A-29011 (Oct. 8, 1962)

In a proceeding under subsection 5(c) of the act of July 23, 1955, to determine the rights of a mining claimant to the surface resources of his mining claim, a finding that the claim is subject to the limitations and restrictions of section 4 of that act is proper when there is no evidence that a discovery of a valuable mineral deposit has been made on the claim.

United States v. Joseph Knox et al., A-29059 (Oct. 31, 1962)

HEARINGS

A request to produce new evidence which would require reopening a hearing proceeding in a contest against mining claims will be denied where there is no substantial equitable basis for granting the request.

United States v. Arizona Exploration Company et al., A-28876 (June 22, 1962)

MINING CLAIMS--Continued

HEARINGS--Continued

A mining claimant who fails to appear at a hearing set to inquire into the validity of his claim and offers no evidence in support of the validity of the claim is not entitled to further consideration on the plea that the United States did not show at the hearing the absence of a discovery of all possible minerals in the claim.

United States v. Frank J. Clement and O. N. England, A-28920 (Sept. 11, 1962)

Where the date on which a mining claim was located as shown by a verified statement filed under the act of July 23, 1955, is a date when the land was within a first form reclamation withdrawal and so withdrawn from mining location, and after the verified statement is filed, evidence is submitted by the mining claimants tending to show that the claim was first located on a date when the land was open to mining entry, the Department will not declare the claim null and void for having been located on land withdrawn from mineral entry without a hearing on the question of the date on which the claim was located.

Mr. and Mrs. Ted R. Wagner, A-28989 (Oct. 30, 1962) 69 I.D.186

LANDS SUBJECT TO

Land which is appropriated and transferred to a State highway department as a material site is not subject to mining locations.

J. M. Keeney et al., A-28856 (Aug. 6, 1962)

MILL SITES

A mining claim located as a mill site on land subject to reclamation withdrawal initiates no rights in the locator and is void from its purported inception.

J. P. Hinds, A-29239 (Mar. 8, 1962)

MINING CLAIMS--Continued

PLACER CLAIMS

Where it is held that a valid discovery has been made on one 10-acre portion of a placer claim, each remaining 10-acre subdivision must be shown to be mineral in character.

United States v. Eleanor A. Gray et al., A-28710 (May 18, 1962)

POWER SITE LANDS

Mining claims located on lands which are under examination and survey by a prospective licensee of the Federal Power Commission pursuant to section 2(a) of the act of August 11, 1955, are not open to mineral location and mining locations made on such lands while they are not open to location are properly held null and void.

Francis N. Dlouhy, A-28597 (May 18, 1962)

SPECIAL ACTS

To satisfy the requirement for a discovery on a mining claim located for scoria which will free that claim from the restrictions of section 4 of the act of July 23, 1955, it must be shown that the exposed materials appearing within the limits of the claim could have been extracted, removed and marketed at a profit before the adoption of the act.

United States v. Elmer J. Gustafson, A-28665 (Jan. 30, 1962)

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claim it must be shown that there has been a valid discovery within the meaning of the mining laws made within the limits of his claim to prevent the claim from being subjected to the terms and limitations of section 4 of that act.

United States v. Spar Mining Company et al., A-28786 (July 30, 1962)

MINING CLAIMS--Continued

SPECIAL ACTS--Continued

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of a mining claim, a valid discovery must be shown within the limits of the claim by the same evidence which establishes the validity of a mining claim under the mining laws in order to prevent subjection of the claim to the limitations and restrictions of section 4 of the act.

United States v. Sam Thompson et al., A-28727 (Aug. 1, 1962)

In a proceeding under subsection 5(c) of the act of July 23, 1955, to determine the rights of a mining claimant to the surface resources of his mining claim, a finding that the claim is subject to the limitations and restrictions of section 4 of that act is proper when there is no evidence that a discovery of a valuable mineral deposit has been made on the claim.

United States v. Joseph Knox et al., A-29059 (Oct. 31, 1962)

SURFACE USES

To satisfy the requirement for a discovery on a mining claim located for scoria which will free that claim from the restrictions of section 4 of the act of July 23, 1955, it must be shown that the exposed materials appearing within the limits of the claim could have been extracted, removed and marketed at a profit before the adoption of the act.

United States v. Elmer J. Gustafson, A-28665 (Jan. 30, 1962)

Unpatented mining claims are subject to the paramount title of the United States which owns both the lands embraced within the claims and the timber thereon, and the mining claimants' rights therein are limited to use of the land and timber for mining purposes.

Emergency Salvage Operations On Unpatented Mining Claims, M-36636 (Apr. 5, 1962)

MINING CLAIMS--Continued

SURFACE USES--Continued

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claim it must be shown that there has been a valid discovery within the meaning of the mining laws made within the limits of his claim to prevent the claim from being subjected to the terms and limitations of section 4 of that act.

United States v. Spar Mining Company et al., A-28786 (July 30, 1962)

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of a mining claim, a valid discovery must be shown within the limits of the claim by the same evidence which establishes the validity of a mining claim under the mining laws in order to prevent subjection of the claim to the limitations and restrictions of section 4 of the act.

United States v. Sam Thompson et al., A-28727 (Aug. 1, 1962)

A verified statement required under the act of July 23, 1955, is properly rejected and the use of the surface resources denied to a mining claimant who files such statement after the termination of the period of 150 days prescribed by the statute for such filing.

Libby Gold Corporation, A-28800 (Aug. 15, 1962)

To establish the validity of a mining claim which, in 1954, was located on account of deposits of a common variety of building stone, the mining claimant must show that on or before July 23, 1955, the stone was marketable at a profit, and if the validity of such a claim is not so established, the claim is subject to the limitations of section 4 of the act of July 23, 1955, restricting the use of vegetative and other surface resources on the land covered by the claim.

United States v. Donald J. Morgan, A-28702 (Aug. 21, 1962)

The requirement of section 5 of the act of July 23, 1955, that a copy of a published notice be personally delivered or mailed by registered mail to certain mining claimants is satisfied by mailing the notice by registered mail to the proper address and it is immaterial that the addressee may not have personally received the notice from the person who signed for it.

James W. Harmon, A-28983 (Sept. 20, 1962)

MINING CLAIMS--Continued

SURFACE USES--Continued

Where, within the 150 days required by the act of July 23, 1955, a verified statement was timely filed setting forth the information required by the act in connection with determining rights to surface resources on unpatented mining claims, the determination as to whether an allegedly mistaken reply on the verified statement may be corrected after the 150-day period has elapsed is a matter of administrative discretion.

Mr. and Mrs. Ted R. Wagner, A-28989 (Oct. 30, 1962) 69 I.D. 186

TITLE

Unpatented mining claims are subject to the paramount title of the United States which owns both the lands embraced within the claims and the timber thereon, and the mining claimants' rights therein are limited to use of the land and timber for mining purposes.

Emergency Salvage Operations On Unpatented Mining Claims, M-36636 (Apr. 5, 1962)

WITHDRAWN LAND

A mining claim located as a mill site on land subject to reclamation withdrawal initiates no rights in the locator and is void from its purported inception.

J. P. Hinds, A-29239 (Mar. 8, 1962)

Mining claims located on lands within a national forest after they have been appropriated by the United States for a public purpose are null and void ab initio; however, where the record is not clear as to the extent of the appropriation, which depends on the extent of the improvements and actual use and occupancy of the land by the Government, the factual issue should be resolved by a hearing.

Whether mining claimants have any valid property rights to unappropriated lands which are withdrawn for the purposes of a Federal agency subsequent to the filing of their mining locations depends upon whether the claims were perfected by a discovery thereon of a valuable mineral deposit prior to the segregative date of the withdrawal, which is the late that the receipt of the application for the withdrawal by the agency is noted upon the appropriate records of this Department.

A. J. Katches & Howard M. Brickel D/B/A Mid-Continent Exploration Co., A-29079 (Dec. 4, 1962)

MULTIPLE MINERAL DEVELOPMENT ACT

GENERALLY

The asserted right or interest of a holder of a mining claim located for a mineral that is leasable under the Mineral Leasing Act is properly held to be without effect or validity when in a proceeding held pursuant to section 7 of the act of August 13, 1954, it is determined that no discovery was made before February 25, 1920, when the Mineral Leasing Act was adopted, or that work leading to a discovery was not being diligently prosecuted at that time and thereafter until discovery was made within the boundaries of the claim.

Leoball Oil Company et al., A-28940 (Aug. 16, 1962)

NATIONAL PARK SERVICE AREAS

LAND

Generally

When a statute simply provides that the mining laws are extended to a national park or national monument, the land within that park or monument is subject to withdrawal from mining to the same extent and on the same basis as similar land subject to the mining laws outside a park or monument.

Proposed Withdrawal of Land in Death Valley National Monument From Mining Location For Various Public Purposes, M-36585 (Apr. 12, 1962)

NOTICE

A finding by the Geological Survey that land in Alaska is prospectively valuable for oil and gas need not be published in the Federal Register under the provisions of section 5(a) of the Federal Register Act.

A decision directed to an individual requiring him to perform certain acts or suffer cancellation of his entry need not be published under the provisions of section 5(a) of the Federal Register Act.

Milton H. Lichtenwalner et al., A-28825 et al (May 31, 1962) 69 I.D. 71

NOTICE--Continued

There can be no notice of cessation of the need of a State highway department for a material site where such a notice asserted to have been mailed, is never received by the Bureau of Land Management.

J. M. Keeney et al., A-28856 (Aug. 6, 1962)

The requirement of section 5 of the act of July 23, 1955, that a copy of a published notice be personally delivered or mailed by registered mail to certain mining claimants is satisfied by mailing the notice by registered mail to the proper address and it is immaterial that the addressee may not have personally received the notice from the person who signed for it.

James W. Harmon, A-28983 (Sept. 20, 1962)

OIL AND GAS LEASES

GENERALLY

Where a determination has been made under section 40 of the Mineral Leasing Act that water struck while drilling for oil under an oil and gas lease is not presently valuable and usable at a reasonable cost and where additional information is submitted tending to show otherwise, the case will be remanded for a reconsideration of the determination.

When water struck while drilling for oil under an oil and gas lease issued pursuant to the Mineral Leasing Act is determined to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, the land on which the well is located will be reserved as a water hole and the well operated or leased to accomplish the purposes of section 40 of the Mineral Leasing Act.

When water struck while drilling for oil under an oil and gas lease issued pursuant to the Mineral Leasing Act is determined not to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, the well is to be plugged and abandoned by the oil and gas lessee.

Otis A. Roberts, A-29020 (June 12, 1962)
69 I.D. 91

OIL AND GAS LEASES--Continued

GENERALLY--Continued

It is proper to vacate a drawing held to determine the priority of consideration of conflicting oil and gas lease offers simultaneously filed where it is determined that some offers entitled to inclusion in the drawing were omitted therefrom.

Morris Lavine, A-28955 (Aug. 3, 1962)

The Department adheres to its previous decision in Nettie M. Lewis et al., A-28535 (January 27, 1961), that there appears to be no requirement for approval by the Bureau of the Budget of stipulations required by the Forest Service as a condition to the issuance of acquired land oil and gas leases on national forest land.

Celia R. Kammerman, A-28827 (Aug. 3, 1962)

The administrative practice of rejecting applications for oil and gas leases where the lands applied for are included within outstanding leases does not prevent the Director, Bureau of Land Management, from inquiring into the validity of the outstanding leases.

Arkansas Louisiana Gas Company, A-28751 (Aug. 15, 1962)

The Department adheres to its previous decisions in Nettie M. Lewis et al., A-28535 (January 27, 1961), and Celia R. Kammerman, A-28827 (August 3, 1962), that there appears to be no requirement for approval by the Bureau of the Budget of stipulations required by the Forest Service as a condition to the issuance of acquired land oil and gas leases on national forest land.

Jacob N. Wasserman, A-28880 (Sept. 21, 1962)

Where a State swampland selection conflicts with a prima facie valid oil and gas lease, the swampland application will not be allowed until the State has established the swamp character of the land either in a contest brought against the oil and gas lease or at a hearing ordered by the Department at which the State will have the burden of proof.

Thomas Connell, A-29036 (Oct. 16, 1962)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where a junior oil and gas lease offeror appeals from the rejection of his offer because of the award of a lease to a senior offeror on the ground that the senior offer was filed after his offer, the rejection will be affirmed where he furnishes no evidence in support of his allegation; it is not incumbent upon the Department to prove to him that the senior offer was filed prior to his offer.

Floyd Blaine, A-29097 (Oct. 16, 1962)

An oil and gas lessee is properly required to consent to the amendment of her oil and gas lease to conform to the requirements of the Mineral Leasing Act Revision of 1960 which was adopted on the same day that the lease was issued where there is no record as to the time of the day on which the President signed the act; consequently the presumption applies that the act became effective from the first minute of the day and prior to acceptance of the lease offer.

Bette M. Snyder, A-29046 (Oct. 22, 1962)

ACQUIRED LAND LEASES

An acquired land oil and gas lease offer which describes a tract of unsurveyed land in terms of the calls given to describe the boundaries of a portion of the land in a deed conveying a certain tract to the United States and an additional line designated by courses and distances run from a point on the outside boundary to another point on the outside boundary of that tract complies with the regulation in effect at the time the offer was filed even though the independent line cuts through an additional tract separately acquired by the United States which is located wholly within the boundaries of the tract which forms the basis for the description in the offer and even though the offer describes the land applied for only as being a part of the latter tract.

An offer to lease acquired land in which the United States owns only a fractional interest in the minerals is defective if it is not accompanied by a statement designating the owner of operating rights in the mineral interest not owned by the United States and the offer confers no priority upon the offeror until such statement is filed.

Where an acquired lands lease offer describes the land applied for in terms of a deed from the United States conveying the surface and 25% of the mineral rights rather than in terms of the deed by which the United States

OIL AND GAS LEASES--Continued

ACQUIRED LAND LEASES--Continued

acquired the land, and the boundary the former describes is not congruent with the boundary of the latter, the description nevertheless is "consistent with" the description in the deed to the United States so long as it is in substantial harmony and agreement with it.

New York State Natural Gas Corporation
Jacob N. Wasserman, A-28687 (July 19, 1962)

An oil and gas lease offer is properly rejected where the land applied for consists of accretion to land acquired by and under the jurisdiction of the Department of the Army and that Department does not consent to the issuance of a lease on the accreted lands because of its uncertainty as to whether title to the lands is in the United States or the State of Louisiana.

The California Company, A-28753 (July 30, 1962)

An applicant's assertion that an agency administering acquired lands is uncertain about the correct metes and bounds description of a tract of acquired land within its jurisdiction, which land is not within the area of the public land surveys, does not warrant allowance of an application which contains a defective description of the land included in the application, and the application is properly rejected.

Ernest F. Brackmier, A-28911 (Sept. 20, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28937 (Sept. 25, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-29041 (Nov. 7, 1962)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

The limitation of 2, 560 acres which may be included in an acquired lands oil and gas lease offer is imposed for the purpose of confining the physical extent of a lease and that acreage may not be exceeded in an offer even though the United States owns less than the entire interest in the oil and gas deposits so that the net acreage chargeable to the offeror and for which he must pay rental is less than 2, 560 acres.

Bruce Anderson, A-28696 (Oct. 10, 1962) 69 I.D. 169

ACREAGE LIMITATIONS

The regulation calling for the rejection of oil and gas lease offers where the acreage in those offers, when added to the acreage in outstanding leases and pending lease offers of the offerors, would exceed the maximum acreage limitation on leases set forth in the Mineral Leasing Act is designed to insure the proper administration of the act and is well within the authority of the Secretary of the Interior as the administrator of that act.

In computing an offeror's chargeable acreage, it is proper to include all his pending offers, even though such offers may not have received top priority in drawings of simultaneously filed offers already held.

Melvin A. Brown, A-28923 (Aug. 31, 1962) 69 I.D. 131

The limitation of 2, 560 acres which may be included in an acquired lands oil and gas lease offer is imposed for the purpose of confining the physical extent of a lease and that acreage may not be exceeded in an offer even though the United States owns less than the entire interest in the oil and gas deposits so that the net acreage chargeable to the offeror and for which he must pay rental is less than 2, 560 acres.

Bruce Anderson, A-28696 (Oct. 10, 1962) 69 I.D. 169

OIL AND GAS LEASES--Continued

APPLICATIONS

A protest against issuance of an oil and gas lease to an offeror who filed his offer after the relinquishment of a prior lease on the land is properly rejected where the protest is based simply on an irresponsible charge that an iniquitous relationship existed between the offeror and former lessee and there is no evidence to support the charge.

Duncan Miller, A-29312 (Jan. 29, 1962)

An application for a noncompetitive oil and gas lease is properly rejected if the lands covered thereby are the subject of an existing and valid oil and gas lease.

Carolyn C. Stockmeyer, A-28756 (Jan. 30, 1962)

Oil and gas lease offers which were filed before the amendment of the Mineral Leasing Act by the act of September 2, 1960, and which are still pending are subject to the act of September 2, 1960, and offerors thereunder are properly required to consent to leases subject to the terms of the act of September 2, 1960.

Harold Ladd Pierce et al., A-28819, A-28904, A-28907, A-28917, A-28930, A-28963, A-28972, A-28973, A-29054, A-29080, A-29214, (Mar. 26, 1962) 69 I.D. 14

An oil and gas lease offer for separate tracts comprising less than 640 acres is properly allowed as to one tract which is surrounded by land not available for leasing and properly rejected as to another tract which adjoins land that was available for leasing when the offer was filed but was not included in the offer.

Gulf Oil Corporation et al., A-28569 (Apr. 20, 1962) 69 I.D. 30

Lands withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and reserved for the use of the Department of the Air Force are not available for leasing under the Mineral Leasing Act of 1920 and an oil and gas lease offer for such land is properly rejected although filed prior to the withdrawal.

M. B. Kirkpatrick, A-28330a (May 17, 1962)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Oil and gas lease offers which were filed before the amendment of the Mineral Leasing Act by the act of September 2, 1960, and which are still pending, as well as offers which were filed after September 2, 1960, are subject to the act of September 2, 1960, and offerors thereunder are properly required to consent to leases subject to the terms of the act of September 2, 1960.

Milton H. Lichtenwalner et al., A-28909, A-29052, A-29208 (June 15, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28368 (July 11, 1962)

An offer to lease lands lying within the part of the Kenai National Moose Range closed to oil and gas leasing by the Secretary's order of July 24, 1958, is properly rejected.

Doris L. Ervin, Executrix of the Estate of E. Wells Ervin, Deceased, A-28330 (July 11, 1962)

Land included in an outstanding oil and gas lease is not available for leasing to others and an offer to lease such land is properly rejected even though the lease has been improperly extended.

Kathleen Morrison, A-28815 (July 17, 1962)

A mere assertion without proof by an offeror for an oil and gas lease whose offer was rejected because a lease was issued to a prior offeror that the latter had knowledge of the relinquishment of a previous lease on the land before he filed or was the alter ego of the previous lessee furnishes no basis for cancelling the lease.

Duncan Miller, A-28864 (July 30, 1962)

An oil and gas lease offer which is defective because it does not include the proper rental payment is properly rejected; the acquisition of first priority in a drawing establishes only the order in which an offer will be considered and does not cure any defects in the offer.

Duncan Miller, A-28946 (Aug. 6, 1962)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

A description of the "SE¼, NE¼" of a section of public land in an oil and gas lease offer must be interpreted as a designation of both subdivisions and not of the "SE¼NE¼" merely because the latter interpretation is consistent with the acreage indicated in the offer and with the rental payment submitted with it, and the offer is properly rejected where the rental payment is deficient by more than 10 percent from the rental required for the land as literally described.

A land office employee has no authority or duty to alter an erroneous description of land in an oil and gas lease offer in order to regard it as a valid offer.

Lendal R. Smith, Sr., A-28868 (Aug. 10, 1962)

Where oil and gas lease offers are rejected because of conflicts with offers previously filed and where the offerors present nothing on appeal to show that the conflicts do not exist, the decision rejecting the offers will be affirmed.

Alvin A. Polet et al., A-28958 (Sept. 10, 1962)

Oil and gas lease offers for land within expired leases filed prior to the time when the lands will become available for new lease offers under a departmental regulation must be rejected.

Richard P. De Smet, A-28910 (Sept. 11, 1962)

An oil and gas lease offer for separate tracts of land comprising less than 640 acres is properly rejected as to one tract that adjoins land which was available for leasing when the offer was filed but was not included in the offer but must be accepted as to another tract entirely surrounded by land not available for leasing.

Arapahoe Oil Company, A-28842 (Sept. 14, 1962)

A challenge to the eligibility of an oil and gas lease offeror cannot be predicated simply because others having the same surname filed simultaneous offers; it must be shown that one person sought to enhance his chances of obtaining a lease by submitting a number of offers intended for his benefit.

Duncan Miller, A-28840 (Sept. 14, 1962)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

A simultaneously-filed noncompetitive oil and gas lease offer that is drawn 106th of 179 such offers is properly rejected after issuance of a lease to an offer of higher priority even though the serial numbers of the offers included in the drawing were not previously recorded in the serial register or posted in the tract book, there being no requirement in the Department's regulations for following such a procedure.

Duncan Miller, A-29025 (Sept. 19, 1962)

Oil and gas lease offers for land within expired leases filed prior to the time when the lands will become available for new lease offers under a departmental regulation must be rejected.

Louise Safarik and Raymond J. Hansen, A-29119 (Sept. 19, 1962)

When the Secretary of the Interior exercises his discretionary authority to issue oil and gas leases by declaring that certain areas of public land will be closed to oil and gas leasing because leasing would be incompatible with other uses to which the land is devoted, oil and gas lease offers covering land in the closed area are properly rejected.

Jack V. Walker, A-28556 (Sept. 21, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28937 (Sept. 25, 1962)

A drawing to determine the priority of conflicting, simultaneously-filed noncompetitive oil and gas lease offers is properly vacated and a new drawing held when it is ascertained that one such offer was improperly excluded from the drawing.

John Halagan, A-29027 (Oct. 4, 1962)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer for separate tracts of land comprising less than 640 acres is properly rejected as to tracts that adjoin land which was available for leasing when the offer was filed but was not included in the offer but must be accepted as to other tracts entirely surrounded by land not available for leasing, and it is improper to hold for cancellation a lease issued only for such isolated tracts.

Duncan Miller, A-28767 (Supp.) (Oct. 10, 1962)

The limitation of 2,560 acres which may be included in an acquired lands oil and gas lease offer is imposed for the purpose of confining the physical extent of a lease and that acreage may not be exceeded in an offer even though the United States owns less than the entire interest in the oil and gas deposits so that the net acreage chargeable to the offeror and for which he must pay rental is less than 2,560 acres.

Bruce Anderson, A-28696 (Oct. 10, 1962) 69 I.D. 169

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-29041 (Nov. 7, 1962)

A person otherwise qualified to hold a noncompetitive oil and gas lease is not disqualified from filing an offer simply because he knew that an earlier lease of the land was to be relinquished and filed his offer upon such relinquishment.

Duncan Miller, A-29057 (Nov. 20, 1962)

Where oil and gas lease offers do not draw first priority in a drawing of simultaneously-filed offers they may be conditionally rejected, subject to reinstatement in the event offers with higher priorities in the drawing do not ripen into leases.

Robert B. Nation, Theodore R. Barker, A-29071, A-29523 (Dec. 5, 1962)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer for separate tracts of land comprising less than 640 acres in the aggregate is properly allowed as to one or more tracts which are surrounded by land unavailable for leasing and properly rejected as to another tract which adjoins land available for leasing when the offer was filed but not included in the offer.

Adele J. Young, A-29090 (Dec. 7, 1962)

Oil and gas lease offers which were filed after the amendment of the Mineral Leasing Act on September 2, 1960, are subject to the amendatory act and the offerors are properly required to consent to leases subject to the terms of the amendatory act.

Melba H. Rosi, A-29115 (Dec. 10, 1962)

An oil and gas lease offeror who accepts a refund of the advance rental payment submitted with his offer, which refund is made pursuant to an unauthorized withdrawal of the offer of which he knows nothing, and who makes no inquiry into the status of his offer until after the land office has issued a lease in response to an offer filed several months after the refund is made, is properly denied reinstatement of his offer and cancellation of the existing lease.

Gwen Gaukel, A-29017 (Dec. 14, 1962)

An oil and gas lease offer which does not comply with the mandatory requirement of an oil and gas regulation that the filing fee and advance rental must be submitted as separate remittances must be rejected without priority, and an offeror's unfamiliarity with the regulation, which is not set out in the oil and gas lease offer form required to be used by offerors, does not excuse noncompliance with the regulation.

Ernest O. Tullis, A-29678 (Dec. 27, 1962)

A noncompetitive oil and gas lease erroneously issued pursuant to an offer filed by one acting as an agent for the offeror without an accompanying statement of any possible interest of the agent in the offer or the prospective lease, as required by regulation 43 CFR 192.42(e)(4), is properly held for cancellation.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., A-28699, A-28887 (Dec. 28, 1962)
69 I.D. 236

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer which contains a description of the land to be leased placed upon the offer form by means of the duplicating process known as "ditto" meets the requirement of a departmental regulation that it be prepared in ink.

A person who selects the land to be applied for, fills in the land description on a previously signed oil and gas lease offer, and files the offer is the agent of the offeror and the offer to earn priority must be accompanied by the statement required by the pertinent regulation, 43 CFR 192.42(e)(4).

Where an oil and gas lease offer is filed by a person pursuant to a written agreement under which he is empowered to act as an attorney in fact for the offeror, the offer to earn priority must be accompanied by the statement required by the pertinent regulation, 43 CFR 192.42(e)(4), even though the party's offer is prepared in a manner not specifically provided for in the agreement.

The Department's regulation, 43 CFR 192.42(e)(4), requiring statements of interest to be filed where an agent or attorney in fact has been authorized to act with respect to an offer is applicable to a situation where the agent's authority to act ceases with the filing of the offer.

Eugenia Bate, A-28519 (Dec. 28, 1962)
69 I.D. 230

ASSIGNMENTS OR TRANSFERS

The pendency at the expiration date of an oil and gas lease of a partial assignment of the lease, which upon approval would extend the term of the segregated leases, does not make the land unavailable for the filing of offers after the expiration of the lease.

Sheridan L. McGarry, A-28759 (Jan. 26, 1962)

The approval of a partial assignment of an oil and gas lease valid in all respects is not to be rescinded at the request of the assignor and assignee merely because they allege they failed to grasp all the consequences of their action.

Roy M. Eidal Kern County Land Company, A-29300 (Feb. 19, 1962)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

A partial assignment of an oil and gas lease is a document required by law or decision to be filed within a stated period and as such comes within the provisions of the regulation relating to filings made on the next business day when the last day of the stated period falls on a day when the office is officially closed.

Belco Petroleum Corporation, Charles Getzler, A-29131 (Mar. 2, 1962) 69 I. D. 3

Where the regulation governing partial assignments of record title of a noncompetitive oil and gas lease does not require that a partial assignment of unsurveyed lands describe the lands assigned by metes and bounds, although the regulation pertaining to offers does, a partial assignment is not to be denied approval because it does not describe the lands by metes and bounds.

A description by projection of the public land survey of unsurveyed land conveyed by a partial assignment of the record title of an oil and gas lease is not defective where there is an established public land corner nearby and the land assigned can be accurately located.

Four Corners Oil & Minerals Co., Paul F. Catterson, A-28715 (Apr. 11, 1962) 69 I. D.22

Where an oil and gas lease is issued pursuant to an offer for less than 640 acres which offer is defective for failure to include adjoining land that was available for leasing at the time the offer was filed, and a proper offer for the same land is pending when the lease is issued, the lease will ordinarily be canceled; but where a lease has been issued pursuant to such a defective offer, and the lease or an interest therein has been assigned, the lease will not be canceled or otherwise acted upon pending determination as to whether the assignee is a bona fide purchaser within the meaning of the Mineral Leasing Act.

Gulf Oil Corporation et al., A-28569 (Apr. 20, 1962) 69 I. D.30

An assignment of an oil and gas lease will not be approved, where, prior to the filing of the assignment, the lease has terminated due to the cessation of production and the lack of reasonable diligence to restore such production.

James P. Psaltis, A-28867 (May 7, 1962)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

A request for approval of a partial assignment of an oil and gas lease is incomplete until all of the things required by the statute to be filed with such request, including any required bond, have been filed and an incomplete application is properly rejected when it is too late to complete the application in time to permit its approval.

Because the approval of an assignment of an oil and gas lease becomes effective on the first day of the lease month following the filing of the request for approval accompanied by three original executed counterparts of the assignment and any required bond and proof of the qualification of the assignee to take or hold a lease, it is not necessary to notify the assignee of the necessity to file a bond if the absence of a bond is discovered at a time when there is less than one month of the lease term to run.

Since in order for a lease to become segregated through partial assignment and thus become entitled to the extension authorized for segregated leases a partial assignment affecting it must be filed while there is still one month remaining to the lease term, where the requirements for filing a partial assignment of a noncompetitive lease are not met before the end of the next to last month of the lease term, the assignment cannot be approved.

Joe T. Juhan, A-28667 (May 17, 1962)

When the regulations in effect at the time a partial assignment of the record title of an oil and gas lease was filed did not require a statement by an assignee that he is the sole party in interest, as was then required of a lease offeror, the assignment should not be denied approval.

Richard P. DeSmet, A-28831 (May 17, 1962)

Approval of assignments of oil and gas leases is properly denied where the assignor does not own the full interest in the leases and does not submit evidence required by regulation that he is authorized to transfer the leases.

Where there is a dispute between private parties over the authority of one to assign a lease in which another has a record interest, the Department will not approve an assignment of the lease until the dispute is resolved by the parties or the courts.

Pine Valley Gas & Oil Co., A-28812 (Sept. 11, 1962)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

The Department's supplemental decision in Franco Western Oil Company et al., 65 I. D. 427, is adhered to.

Richard P. De Smet, A-28910 (Sept. 11, 1962)

The Department's supplemental decision in Franco Western Oil Company et al., 65 I. D. 427, is adhered to.

Louise Safarik and Raymond J. Hansen, A-28845 (Sept. 18, 1962)

The Department's supplemental decision in Franco Western Oil Company et al., 65 I.D. 427, upheld in Louise Safarik and Richard P. DeSmet v. Stewart L. Udall, Secretary of the Interior, in the United States Court of Appeals for the District of Columbia Circuit on June 7, 1962, is adhered to.

Louise Safarik and Raymond J. Hansen, A-29119 (Sept. 19, 1962)

Where the question whether an oil and gas lease is entitled to a two-year extension by virtue of a partial assignment has become moot, an appeal to the Secretary from an adverse decision by the Director of the Bureau of Land Management will be dismissed.

Loretta Inghram et al., A-28964 (Sept. 19, 1962)

Where an oil and gas lessee has given notice of his intention to abandon the well drilled on a particular subdivision of his lease and thereafter has assigned that subdivision and the assignment has been approved, it is improper to attempt to revoke the approval of that assignment because of the failure of the assignee to furnish a drilling bond where the regulations do not clearly call for the furnishing of such a bond in order to make the assignment effective.

Canada Southern Oils, Inc., and W. C. McBride, Inc., A-28941 (Nov. 16, 1962)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where a partial assignment of an oil and gas lease is filed for approval, applications are later filed by the assignor and assignee for a 5-year extension of the segregated portions of the lease to be created by approval of the assignment, and then relinquishments of their interest in the lease are filed by the assignor and assignee prior to the taking of any action on approval of the assignment or the applications for extension, the relinquishments are properly to be considered as a withdrawal of the assignment and the applications for extension, resulting in termination of the lease as of the expiration of its primary term.

Walter G. Davis, A-29048 (Nov. 20, 1962)

BONDS

A request for approval of a partial assignment of an oil and gas lease is incomplete until all of the things required by the statute to be filed with such request, including any required bond, have been filed and an incomplete application is properly rejected when it is too late to complete the application in time to permit its approval.

Joe T. Juhan, A-28667 (May 17, 1962)

An offeror for a noncompetitive oil and gas lease which covers land patented by the United States, with a reservation of the oil and gas, is properly required to file a bond for the protection of the surface owner on the form prescribed by the Department.

An oil and gas offeror is properly required to file a bond for the protection of the owner of the surface of the land for which a lease is desired prior to the issuance of the lease.

Duncan Miller, A-28758 (July 27, 1962)

An oil and gas lease applicant for patented land is properly required to file a bond to protect the owner of surface rights prior to issuance of the lease; but he may choose among the types of bonds permitted by the Department's regulations.

Duncan Miller, A-28974 (Sept. 21, 1962)

OIL AND GAS LEASES--Continued

BONDS--Continued

Where an oil and gas lessee has given notice of his intention to abandon the well drilled on a particular subdivision of his lease and thereafter has assigned that subdivision and the assignment has been approved, it is improper to attempt to revoke the approval of that assignment because of the failure of the assignee to furnish a drilling bond where the regulations do not clearly call for the furnishing of such a bond in order to make the assignment effective.

Canada Southern Oils, Inc., and W. C. McBride, Inc., A-28941 (Nov. 16, 1962)

CANCELLATION

Where an oil and gas lease is issued pursuant to an offer for less than 640 acres which offer is defective for failure to include adjoining land that was available for leasing at the time the offer was filed, and a proper offer for the same land is pending when the lease is issued, the lease will ordinarily be canceled; but where a lease has been issued pursuant to such a defective offer, and the lease or an interest therein has been assigned, the lease will not be canceled or otherwise acted upon pending determination as to whether the assignee is a bona fide purchaser within the meaning of the Mineral Leasing Act.

Gulf Oil Corporation et al., A-28569 (Apr. 20, 1962) 69 I. D. 30

A mere assertion without proof by an offeror for an oil and gas lease whose offer was rejected because a lease was issued to a prior offeror that the latter had knowledge of the relinquishment of a previous lease on the land before he filed or was the alter ego of the previous lessee furnishes no basis for cancelling the lease.

Duncan Miller, A-28864 (July 30, 1962)

A noncompetitive oil and gas lease is properly cancelled as to land known to be within the known geologic structure of a producing gas field before an application to lease was filed and the Geological Survey is not bound by a report made by it that the land is not within a known structure if it subsequently discovers that such report was not based upon information of the structure known before the application was filed.

The Superior Oil Company, A-28897 (Sept. 12, 1962)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

The cancellation of an oil and gas lease as to certain land will be affirmed where prior to consideration of the merits of the cancellation the land is patented and thus is no longer under the jurisdiction of the Department.

Ethel Severson, A-28957 (Supp.) (Sept. 28, 1962)

An oil and gas lease offer for separate tracts of land comprising less than 640 acres is properly rejected as to tracts that adjoin land which was available for leasing when the offer was filed but was not included in the offer but must be accepted as to other tracts entirely surrounded by land not available for leasing, and it is improper to hold for cancellation a lease issued only for such isolated tracts.

Duncan Miller, A-28767 (Supp.) (Oct. 10, 1962)

Where an oil and gas lease is issued to an offeror whose offer earned no priority because it was not accompanied by a required statement of the agent as to his possible interest and there was pending prior to the issuance of the lease a proper offer filed by a qualified junior applicant, the lease must be canceled.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., A-28699, A-28887 (Dec. 28, 1962) 69 I. D. 236

COMPETITIVE LEASES

An offer for a noncompetitive future interest oil and gas lease on acquired lands is properly rejected where the lands are within the undefined known geologic structure of a producing oil and gas field, such lands being subject only to competitive leasing.

Frank J. Asam, A-29337 (May 24, 1962)

CONSENT OF AGENCY

An oil and gas lease offer is properly rejected as to land under the administration of the Agricultural Research Service which objects to leasing for the reason that it would interfere with its range research program.

Weldon C. Julander, A-29224 (Aug. 28, 1962)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

Under the Mineral Leasing Act for Acquired Lands, the Secretary of the Interior is not required to reject an offer to lease for oil and gas purposes land conveyed to a State in which the United States has reserved a fractional mineral interest because the offeror refuses to accept the terms announced by the State as the condition of its consent to the issuance of the lease; whether to lease or not to lease must be based upon a determination whether the best interests of the United States will be served thereby.

Merwin E. Liss, A-28896 (Oct. 10, 1962) 69 I.D. 171

DESCRIPTION OF LAND

Where the regulation governing partial assignments of record title of a noncompetitive oil and gas lease does not require that a partial assignment of unsurveyed lands describe the lands assigned by metes and bounds, although the regulation pertaining to offers does, a partial assignment is not to be denied approval because it does not describe the lands by metes and bounds.

A description by projection of the public land survey of unsurveyed land conveyed by a partial assignment of the record title of an oil and gas lease is not defective where there is an established public land corner nearby and the land assigned can be accurately located.

Four Corners Oil & Minerals Co., Paul F. Catterson, A-28715 (Apr. 11, 1962) 69 I.D. 22

An acquired land oil and gas lease offer which describes a tract of unsurveyed land in terms of the calls given to describe the boundaries of a portion of the land in a deed conveying a certain tract to the United States and an additional line designated by courses and distances run from a point on the outside boundary to another point on the outside boundary of that tract complies with the regulation in effect at the time the offer was filed even though the independent line cuts through an additional tract separately acquired by the United States which is located wholly within the boundaries of the tract which forms the basis for the description in the offer and even though the offer describes the land applied for only as being a part of the latter tract.

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

Where an acquired lands lease offer describes the land applied for in terms of a deed from the United States conveying the surface and 25% of the mineral rights rather than in terms of the deed by which the United States acquired the land, and the boundary the former describes is not congruent with the boundary of the latter, the description nevertheless is "consistent with" the description in the deed to the United States so long as it is in substantial harmony and agreement with it.

New York State Natural Gas Corporation, Jacob N. Wasserman, A-28687 (July 19, 1962)

A description of surveyed public land in an offer as the "$N\frac{1}{4}$" of a section is a defective description which requires rejection of the offer as to that land.

A description of land in an oil and gas lease offer which in part fails to identify any land is a nullity which requires the elimination of the defective portion of the description from the offer.

Duncan Miller, A-28767 (July 23, 1962)

An oil and gas lease offer for acquired land which does not include a complete metes and bounds description of the tracts of land to be leased but lists the parcel numbers assigned to the tracts and refers to the page numbers of the land office availability list containing the complete descriptions is properly rejected as an incomplete offer.

Duncan Miller, A-28926 (July 30, 1962)

An oil and gas lease offer will be rejected where the description of the land applied for contains an ambiguity which makes uncertain the identity of the land covered by the offer.

Robert B. Schick, A-28928 (Aug. 6, 1962)

A description of the "$SE\frac{1}{4}$, $NE\frac{1}{4}$" of a section of public land in an oil and gas lease offer must be interpreted as a designation of both subdivisions and not of the "$SE\frac{1}{4}NE\frac{1}{4}$" merely because the latter interpretation is consistent with the acreage indicated in the offer and with the rental payment submitted with it, and the offer is properly rejected where the rental payment is deficient by more than 10 percent from the rental required for the land as literally described.

Lendal R. Smith, Sr., A-28868 (Aug. 10, 1962)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

Where oil and gas lease offers are rejected because of conflicts with offers previously filed and where the offerors present nothing on appeal to show that the conflicts do not exist, the decision rejecting the offers will be affirmed.

Alvin A. Polet et al., A-28958 (Sept. 10, 1962)

An offer to lease acquired land for oil and gas purposes which designates the land to be leased only by reference to the tract numbers and detailed metes and bounds descriptions given in the list of available land posted in the land office is properly rejected.

Duncan Miller, A-28840 (Sept. 14, 1962)

An applicant's assertion that an agency administering acquired lands is uncertain about the correct metes and bounds description of a tract of acquired land within its jurisdiction, which land is not within the area of the public land surveys, does not warrant allowance of an application which contains a defective description of the land included in the application, and the application is properly rejected.

Ernest F. Brackmier, A-28911 (Sept. 20, 1962)

A noncompetitive oil and gas lease application for unsurveyed land in Alaska is properly rejected when the boundaries of the land to be leased are not laid out in relation to true cardinal directions and such action is possible.

Duncan Miller, A-28999 (Sept. 21, 1962)

A description of unsurveyed land tied to a public land survey corner which describes a rectangle according to prescribed courses and distances does not fail to identify the land intended because the distances in two of the calls are qualified by the words "more or less", because these words, in the absence of explanation or control by monuments, boundaries, or other expressions of intention, may be ignored.

Alice H. Dickson, Robert L. Graham, A-28956 (Sept. 21, 1962)

Where a noncompetitive oil and gas lease offer describes a tract of land by metes and bounds as unsurveyed, and a portion of the land is in fact surveyed, the offer is properly accepted as to the unsurveyed land.

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND

It is proper for a land office to delete from a metes and bounds description of unsurveyed land in an oil and gas lease offer land that cannot be leased in response to such offer because it is in fact surveyed and then to revise the description of the remaining land to be leased to reflect such deletion.

L. M. Schwartzkopf, A-29072 (Nov. 6, 1962)

An offer to lease unsurveyed public land for oil and gas purposes is properly rejected when the metes and bounds description of the land sought to be leased is insufficient to identify the land because it does not close.

Harold L. Rowland, A-29092 (Dec. 10, 1962)

DISCRETION TO LEASE

Where the Secretary exercises his discretionary authority to issue oil and gas leases in a formal manner by issuing a regulation closing certain areas, such as wildlife refuges, to further oil and gas leasing, it is proper to reject all pending offers for such lands, even though some were filed while the lands were open to leasing and, in some cases, leases had been issued for other lands in the refuges.

Shell Oil Company, Frank A. Brown, A-28370, A-28381 (May 7, 1962)

An offer to lease lands lying within the part of the Kenai National Moose Range closed to oil and gas leasing by the Secretary's order of July 24, 1958, is properly rejected.

Doris L. Ervin, Executrix of the Estate of E. Wells Ervin, Deceased, A-28330 (July 11, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28368 (July 11, 1962)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary has discretionary authority over issuing noncompetitive oil and gas leases and he may exercise this authority in a formal manner by promulgating a regulation closing a large area of public land, such as part of the Kenai National Moose Range, to oil and gas leasing.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

When the Secretary of the Interior exercises his discretionary authority to issue oil and gas leases by declaring that certain areas of public land will be closed to oil and gas leasing because leasing would be incompatible with other uses to which the land is devoted, oil and gas lease offers covering land in the closed area are properly rejected.

Jack V. Walker, A-28556 (Sept. 21, 1962)

Where the Secretary has determined to prohibit noncompetitive oil and gas leasing within lands "withdrawn" as a wildlife refuge, he may in the exercise of his discretionary authority reject lease offers for lands adjacent to a wildlife refuge which were acquired for the same purposes and devoted to the same uses as the refuge lands, even if the lands applied for have not been technically withdrawn for refuge purposes.

Gregory Salinas, A-28802, A-29302 (Sept. 25, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28937 (Sept. 25, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-29041 (Nov. 7, 1962)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Under the Mineral Leasing Act for Acquired Lands, the Secretary of the Interior is not required to reject an offer to lease for oil and gas purposes land conveyed to a State in which the United States has reserved a fractional mineral interest because the offeror refuses to accept the terms announced by the State as the condition of its consent to the issuance of the lease; whether to lease or not to lease must be based upon a determination whether the best interests of the United States will be served thereby.

Merwin E. Liss, A-28896 (Oct. 10, 1962) 69 I.D. 171

EXTENSIONS

Since in order for a lease to become segregated through partial assignment and thus become entitled to the extension authorized for segregated leases a partial assignment affecting it must be filed while there is still one month remaining to the lease term, where the requirements for filing a partial assignment of a noncompetitiive lease are not met before the end of the next to last month of the lease term, the assignment cannot be approved.

Joe T. Juhan, A-28667 (May 17, 1962)

Where lands covered by a noncompetitive oil and gas lease are included within the limits of a known geologic structure of a producing oil field during the initial 5-year term of the lease and during the same period the lease is committed to an approved unit agreement under which production in paying quantities was had on its effective date and since then, an application for a 2-year extension of the lease under section 17 of the Mineral Leasing Act, filed shortly before the end of the initial 5-year term of the lease, is properly rejected on the ground that production under the unit agreement during the term of the lease continued the lease for as long as it remains subject to the unit agreement.

Pan American Petroleum Corporation, A-28832 (June 27, 1962)

Land included in an outstanding oil and gas lease is not available for leasing to others and an offer to lease such land is properly rejected even though the lease has been improperly extended.

Kathleen Morrison, A-28815 (July 17, 1962)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

The Department's supplemental decision in Franco Western Oil Company et al., 65 I. D. 427, is adhered to.

Richard P. De Smet, A-28910 (Sept. 11, 1962)

Under section 17 of the Mineral Leasing Act, as amended by the Act of August 8, 1946, a 5-year noncompetitive oil and gas lease terminates by operation of law if the record titleholder fails to apply for an extension of the lease within 90 days before the expiration of the initial 5-year period for which it was issued.

Duncan Miller, A-28846 (Sept. 14, 1962)

The Department's supplemental decision in Franco Western Oil Company et al., 65 I. D. 427, is adhered to.

Louise Safarik and Raymond J. Hansen, A-28845 (Sept. 18, 1962)

The Department's supplemental decision in Franco Western Oil Company et al., 65 I.D. 427, upheld in Louise Safarik and Richard P. DeSmet v. Stewart L. Udall, Secretary of the Interior, in the United States Court of Appeals for the District of Columbia Circuit on June 7, 1962, is adhered to.

Louise Safarik and Raymond J. Hansen, A-29119 (Sept. 19, 1962)

Where a partial assignment of an oil and gas lease is filed for approval, applications are later filed by the assignor and assignee for a 5-year extension of the segregated portions of the lease to be created by approval of the assignment, and then relinquishments of their interest in the lease are filed by the assignor and assignee prior to the taking of any action on approval of the assignment or the applications for extension, the relinquishments are properly to be considered as a withdrawal of the assignment and the applications for extension, resulting in termination of the lease as of the expiration of its primary term.

Walter G. Davis, A-29048 (Nov. 20, 1962)

Where the question as to whether an oil and gas lease is entitled to a two-year extension by subsection 4(d) of the Mineral Leasing Act Revision of 1960 has become moot, an appeal to the Secretary on that question will be dismissed.

Burton W. Hancock, A-29069 (Nov. 20, 1962)

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT

A protest against issuance of an oil and gas lease to an offeror who filed his offer after the relinquishment of a prior lease on the land is properly rejected where the protest is based simply on an irresponsible charge that an iniquitous relationship existed between the offeror and former lessee and there is no evidence to support the charge.

Duncan Miller, A-29312 (Jan. 29, 1962)

FUTURE AND FRACTIONAL INTEREST LEASES

An offer for a noncompetitive future interest oil and gas lease on acquired lands is properly rejected where the lands are within the undefined known geologic structure of a producing oil and gas field, such lands being subject only to competitive leasing.

Frank J. Asam, A-29337 (May 24, 1962)

An offer to lease acquired land in which the United States owns only a fractional interest in the minerals is defective if it is not accompanied by a statement designating the owner of operating rights in the mineral interest not owned by the United States and the offer confers no priority upon the offeror until such statement is filed.

New York State Natural Gas Corporation Jacob N. Wasserman, A-28687 (July 19, 1962)

An application for a future interest oil and gas lease automatically lapses when the present possessory interest in the oil and gas deposits vests in the United States.

Arkansas Louisiana Gas Company, A-28751 (Aug. 15, 1962)

The limitation of 2,560 acres which may be included in an acquired lands oil and gas lease offer is imposed for the purpose of confining the physical extent of a lease and that acreage may not be exceeded in an offer even though the United States owns less than the entire interest in the oil and gas deposits so that the net acreage chargeable to the offeror and for which he must pay rental is less than 2,560 acres.

Bruce Anderson, A-28696 (Oct. 10, 1962)
69 I. D. 169

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES --Continued

An offer for a fractional interest acquired lands lease is properly rejected, and a request for the reinstatement of an offer for such a lease is properly denied, where upon the issuance of a lease the lessee would not own any operating rights in the one-half of the fractional mineral interest not owned by the United States.

Duncan Miller, A-29392 (Nov. 20, 1962)

KNOWN GEOLOGICAL STRUCTURE

A protest against the noncompetitive leasing of land on the ground that the land is in the known geological structure of a producing field is properly dismissed where the determination that the land is on such a structure is not made until after the land has been available for noncompetitive filing.

Macson Oil Company, A-28970 (July 30, (1962).

A noncompetitive oil and gas lease is properly cancelled as to land known to be within the known geologic structure of a producing gas field before an application to lease was filed and the Geological Survey is not bound by a report made by it that the land is not within a known structure if it subsequently discovers that such report was not based upon information of the structure known before the application was filed.

The Superior Oil Company, A-28897 (Sept. 12, 1962)

The determination of the boundary lines of the known geologic structure of a producing oil or gas field or of an undefined addition to such field does not guarantee the productiveness of the area so designated; the known geologic structure of a producing oil or gas field is defined as the trap, whether structural or stratigraphic, in which an accumulation of oil and gas has taken place and includes all acreage that is presumptively productive.

Where the facts on which a determination that land is within the known geologic structure of a producing oil or gas field, whether defined or undefined, are known prior to the date on which a noncompetitive offer to lease for oil and gas is filed, it is the date of the ascertainment of the facts and not the announcement of it that determines whether

OIL AND GAS LEASES--Continued

KNOWN GEOLOGICAL STRUCTURE--Continued

lands are to be leased competitively or noncompetitively.

In making a determination of a geologic structure "undefined," the Department has never prepared maps or diagrams and the regulation governing definitions of known geological structures has never required the preparation of maps or diagrams of the undefined structures.

Columbian Carbon Company, A-28706 (Oct. 10, 1962)

It is proper for the Geological Survey to determine the boundaries of the known geologic structure of a producing oil or gas field by delineating the known or inferred limits of the structural or stratigraphic trap in which oil or gas has accummulated without attempting to point out the limits of the producing area of such trap.

C. W. MacMillan, A-29050 (Oct. 11, 1962)

A noncompetitive oil and gas lease offer for land which the Geological Survey has determined is within the known geologic structure of a producing gas field is properly rejected, and a request for the reinstatement of a previous offer for a noncompetitive lease on such land is properly denied where the request for reinstatement is filed after the determination that the land is within the known geologic structure.

Duncan Miller, A-29392 (Nov. 20, 1962)

LANDS SUBJECT TO

The pendency at the expiration date of an oil and gas lease of a partial assignment of the lease, which upon approval would extend the term of the segregated leases, does not make the land unavailable for the filing of offers after the expiration of the lease.

Sheridan L. McGarry, A-28759 (Jan. 26, 1962)

Where it appears that lands were omitted from public land surveys through gross error or fraud, the omitted lands are open to the filing of offers to lease for oil and gas and, if all else be regular, to the issuance of an oil and gas lease.

Ralph E. May, C. S. McGhee, A-29014 (Jan. 30, 1962)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where the Secretary exercises his discretionary authority to issue oil and gas leases in a formal manner by issuing a regulation closing certain areas, such as wildlife refuges, to further oil and gas leasing, it is proper to reject all pending offers for such lands, even though some were filed while the lands were open to leasing and, in some cases, leases had been issued for other lands in the refuges.

Shell Oil Company, Frank A. Brown, A-28370, A-28381 (May 7, 1962)

Lands withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and reserved for the use of the Department of the Air Force are not available for leasing under the Mineral Leasing Act of 1920 and an oil and gas lease offer for such land is properly rejected although filed prior to the withdrawal.

M. B. Kirkpatrick, A-28330a (May 17, 1962)

It is proper to reject an offer for an oil and gas lease where the land applied for has been granted to a State.

Nicholas D. Olivier, A-28919 (June 22, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28368 (July 11, 1962)

Land included in an outstanding oil and gas lease is not available for leasing to others and an offer to lease such land is properly rejected even though the lease has been improperly extended.

Kathleen Morrison, A-28815 (July 17, 1962)

Oil and gas lease offers filed for lands after such lands have been closed to oil and gas leasing must be rejected.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An application for a future interest oil and gas lease on land covered by an outstanding future interest oil and gas lease is properly rejected.

Arkansas Louisiana Gas Company, A-28751 (Aug. 15, 1962)

An offer to lease a mineral interest reserved in acquired land disposed of as surplus by the General Services Administration under the Federal Property and Administrative Services Act of 1949 is properly rejected as beyond the authority conferred upon the Secretary of the Interior by the Mineral Leasing Act for Acquired Lands.

Duncan Miller, A-28949 (Sept. 10, 1962)

Oil and gas lease offers must be rejected where the lands covered thereby have been patented without a reservation of the minerals in the United States and the fact that a State statute purports to vest disposition in the United States of the minerals in the lands does not operate to authorize issuance by this Department of oil and gas leases on such lands.

Richfield Oil Corporation, A-28922 (Sept. 12, 1962)

Oil and gas lease offers are properly rejected as to lands which have not yet been included in a list of lands available for leasing posted in the land office.

Louise Safarik and Raymond J. Hansen, A-28845 (Sept. 18, 1962)

When the Secretary of the Interior exercises his discretionary authority to issue oil and gas leases by declaring that certain areas of public land will be closed to oil and gas leasing because leasing would be incompatible with other uses to which the land is devoted, oil and gas lease offers covering land in the closed area are properly rejected.

Jack V. Walker, A-28556 (Sept. 21, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28937 (Sept. 25, 1962)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where a regulation provides that all lands falling within its definition of "wildlife refuge lands" are not to be leased noncompetitively, it is proper to reject noncompetitive offers to lease such lands, even though in some cases other leases had been issued for lands in the refuge.

Gregory Salinas, A-28802, A-29302 (Sept. 25, 1962)

The cancellation of an oil and gas lease as to certain land will be affirmed where prior to consideration of the merits of the cancellation the land is patented and thus is no longer under the jurisdiction of the Department.

Ethel Severson, A-28957 (Supp.) (Sept. 28, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-29041 (Nov. 7, 1962)

Land included in an outstanding oil and gas lease is not available for leasing to others and an offer to lease such land is properly rejected regardless of whether the outstanding lease was or was not properly issued.

Charles E. Howell, Sr., A-29130 (Nov. 20, 1962)

NONCOMPETITIVE LEASES

Oil and gas lease offers which were filed before the amendment of the Mineral Leasing Act by the act of September 2, 1960, and which are still pending are subject to the act of September 2, 1960, and offerors thereunder are properly required to consent to leases subject to the terms of the act of September 2, 1960.

Harold Ladd Pierce et al., A-28819, A-28904, A-28907, A-28917, A-28930, A-28963, A-28972, A-28973, A-29054, A-29080, A-29214 (Mar. 26, 1962) 69 I. D. 14

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Oil and gas lease offers which were filed before the amendment of the Mineral Leasing Act by the act of September 2, 1960, and which are still pending, as well as offers which were filed after September 2, 1960, are subject to the act of September 2, 1960, and offerors thereunder are properly required to consent to leases subject to the terms of the act of September 2, 1960.

Milton H. Lichtenwalner et al., A-28909, A-29052, A-29208 (June 15, 1962)

A protest against the noncompetitive leasing of land on the ground that the land is in the known geological structure of a producing field is properly dismissed where the determination that the land is on such a structure is not made until after the land has been available for noncompetitive filing.

Macson Oil Company, A-28970 (July 30, 1962)

An offer to lease public land noncompetitively for oil and gas purposes which has been found to be within a known geologic structure of a producing oil or gas field is properly rejected where the facts upon which the determination of the known geologic structure is based were ascertained prior to the date on which the offer is filed.

C. W. MacMillan, A-29050 (Oct. 11, 1962)

Oil and gas lease offers which were filed after the amendment of the Mineral Leasing Act on September 2, 1960, are subject to the amendatory act and the offerors are properly required to consent to leases subject to the terms of the amendatory act.

Melba H. Rosi, A-29115 (Dec. 10, 1962)

PRODUCTION

All the leases included within a unit agreement are made one lease as far as production is concerned. Consequently, actual production on any lease in the unit is constructive production on all other leases in the unit.

Automatic Termination of Unitized Leases For Failure to Pay Rentals, M-36629 (June 25, 1962) 69 I. D. 110

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

Where lands covered by a noncompetitive oil and gas lease are included within the limits of a known geologic structure of a producing oil field during the initial 5-year term of the lease and during the same period the lease is committed to an approved unit agreement under which production in paying quantities was had on its effective date and since then, an application for a 2-year extension of the lease under section 17 of the Mineral Leasing Act, filed shortly before the end of the initial 5-year term of the lease, is properly rejected on the ground that production under the unit agreement during the term of the lease continued the lease for as long as it remains subject to the unit agreement.

Pan American Petroleum Corporation, A-28832 (June 27, 1962)

REINSTATEMENT

A noncompetitive oil and gas lease offer for land which the Geological Survey has determined is within the known geologic structure of a producing gas field is properly rejected, and a request for the reinstatement of a previous offer for a noncompetitive lease on such land is properly denied where the request for reinstatement is filed after the determination that the land is within the known geologic structure.

An offer for a fractional interest acquired lands lease is properly rejected, and a request for the reinstatement of an offer for such a lease is properly denied, where upon the issuance of a lease the lessee would not own any operating rights in the one-half of the fractional mineral interest not owned by the United States.

Duncan Miller, A-29392 (Nov. 20, 1962)

An oil and gas lease offeror who accepts a refund of the advance rental payment submitted with his offer, which refund is made pursuant to an unauthorized withdrawal of the offer of which he knows nothing, and who makes no inquiry into the status of his offer until after the land office has issued a lease in response to an offer filed several months after the refund is made, is properly denied reinstatement of his offer and cancellation of the existing lease.

Gwen Gaukel, A-29017 (Dec. 14, 1962)

OIL AND GAS LEASES--Continued

RELINQUISHMENTS

A diminution in the rental obligation of an oil and gas lessee because of an asserted partial relinquishment of the lease cannot be recognized where the purported relinquishment cannot be found in the Bureau of Land Management although evidence is submitted suggesting that the relinquishment was received in the proper land office.

Holly Oil Company, A-28708 (July 26, 1962)

A mere assertion without proof by an offeror for an oil and gas lease whose offer was rejected because a lease was issued to a prior offeror that the latter had knowledge of the relinquishment of a previous lease on the land before he filed or was the alter ego of the previous lessee furnishes no basis for cancelling the lease.

Duncan Miller, A-28864 (July 30, 1962)

Where a partial assignment of an oil and gas lease is filed for approval, applications are later filed by the assignor and assignee for a 5-year extension of the segregated portions of the lease to be created by approval of the assignment, and then relinquishments of their interest in the lease are filed by the assignor and assignee prior to the taking of any action on approval of the assignment or the applications for extension, the relinquishments are properly to be considered as a withdrawal of the assignment and the applications for extension, resulting in termination of the lease as of the expiration of its primary term.

Walter G. Davis, A-29048 (Nov. 20, 1962)

A person otherwise qualified to hold a noncompetitive oil and gas lease is not disqualified from filing an offer simply because he knew that an earlier lease of the land was to be relinquished and filed his offer upon such relinquishment.

Duncan Miller, A-29057 (Nov. 20, 1962)

An oil and gas lease offeror who accepts a refund of the advance rental payment submitted with his offer, which refund is made pursuant to an unauthorized withdrawal of the offer of which he knows nothing, and who makes no inquiry into the status of his offer until after the land office has issued a lease in response to an offer filed several months after the refund is made, is properly denied reinstatement of his offer and cancellation of the existing lease.

Gwen Gaukel, A-29017 (Dec. 14, 1962)

OIL AND GAS LEASES--Continued

RENTALS

Where a lease contains a well capable of producing oil or gas in paying quantities on the day the annual rental falls due, it is not automatically terminated for failure to pay the annual rental where as a result of a later action the land containing the well is removed from the lease effective as of a date prior to the anniversary date.

Roy M. Eidal, Kern County Land Company, A-29300 (Feb. 19, 1962)

The automatic termination provision in section 31 of the Mineral Leasing Act, as amended, does not apply to a situation where, due to other contingencies, additional rent may become due on a date other than the anniversary date of a lease.

C. W. Trainer, A-28895 (June 4, 1962)
69 I.D. 81

Unitized oil and gas leases not included in a participating area are not subject to automatic termination under section 31 of the Mineral Leasing Act if there is a producing or producible well any where in the unit area.

The Ohio Oil Company et al., A-29154 (July 13, 1962)

Unitized oil and gas leases not included in a participating area are not subject to automatic termination under section 31 of the Mineral Leasing Act if there is a producing or producible well anywhere in the unit area.

Sinclair Oil and Gas Company, A-29170 (July 13, 1962)

A diminution in the rental obligation of an oil and gas lessee because of an asserted partial relinquishment of the lease cannot be recognized where the purported relinquishment cannot be found in the Bureau of Land Management although evidence is submitted suggesting that the relinquishment was received in the proper land office.

Holly Oil Company, A-28708 (July 26, 1962)

Termination of an oil and gas lease subject to the act of July 29, 1954, is required for failure to pay the annual rental in advance on or before the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities.

Macson Oil Company, A-28970 (July 30, 1962)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease offer which is defective because it does not include the proper rental payment is properly rejected; the acquisition of first priority in a drawing establishes only the order in which an offer will be considered and does not cure any defects in the offer.

Duncan Miller, A-28946 (Aug. 6, 1962)

A description of the "$SE\frac{1}{4}$, $NE\frac{1}{4}$" of a section of public land in an oil and gas lease offer must be interpreted as a designation of both subdivisions and not of the "$SE\frac{1}{4}NE\frac{1}{4}$" merely because the latter interpretation is consistent with the acreage indicated in the offer and with the rental payment submitted with it, and the offer is properly rejected where the rental payment is deficient by more than 10 percent from the rental required for the land as literally described.

Lendal R. Smith, Sr., A-28868 (Aug. 10, 1962)

Where all or part of the land covered by a noncompetitive oil and gas lease is determined to be within an undefined addition to the known geological structure of a producing oil or gas field and timely notice is given the lessee in accordance with the pertinent regulation, the rental is properly increased to $1 per acre so long as the facts upon which the determination is made are ascertained before notice is given; the fact that a map or diagram of the known geologic structure of the producing oil or gas field has not been filed is immaterial.

Columbian Carbon Company, A-28706 (Oct. 10, 1962)

An oil and gas lease offer which does not comply with the mandatory requirement of an oil and gas regulation that the filing fee and advance rental must be submitted as separate remittances must be rejected without priority, and an offeror's unfamiliarity with the regulation, which is not set out in the oil and gas lease offer form required to be used by offerors, does not excuse noncompliance with the regulation.

Ernest O. Tullis, A-29678 (Dec. 27, 1962)

OIL AND GAS LEASES--Continued

640-ACRE LIMITATION

An oil and gas lease offer for separate tracts comprising less than 640 acres is properly allowed as to one tract which is surrounded by land not available for leasing and properly rejected as to another tract which adjoins land that was available for leasing when the offer was filed but was not included in the offer.

Gulf Oil Corporation et al., A-28569 (Apr. 20, 1962) 69 I. D. 30

Where an oil and gas lease is issued pursuant to an offer for less than 640 acres which offer is defective for failure to include adjoining land that was available for leasing at the time the offer was filed, and a proper offer for the same land is pending when the lease is issued, the lease will ordinarily be canceled; but where a lease has been issued pursuant to such a defective offer, and the lease or an interest therein has been assigned, the lease will not be canceled or otherwise acted upon pending determination as to whether the assignee is a bona fide purchaser within the meaning of the Mineral Leasing Act.

Gulf Oil Corporation et al., A-28569 (Apr. 20, 1962) 69 I. D. 30

An oil and gas lease offer which includes a proper description of less than 640 acres of land is properly rejected as in violation of the departmental regulation requiring that an offer be for not less than 640 acres.

Duncan Miller, A-28767 (July 23, 1962

An oil and gas lease offer is properly rejected where it covers less than 640 acres and adjacent land was available for leasing when the offer was filed.

Duncan Miller, A-28870 (July 31, 1962)

An oil and gas lease offer for separate tracts of land comprising less than 640 acres is properly rejected as to one tract that adjoins land which was available for leasing when the offer was filed but was not included in the offer but must be accepted as to another tract entirely surrounded by land not available for leasing.

Arapahoe Oil Company, A-28842 (Sept. 14, 1962)

OIL AND GAS LEASES--Continued

640-ACRE LIMITATION--Continued

An oil and gas lease offer for separate tracts of land comprising less than 640 acres is properly rejected as to tracts that adjoin land which was available for leasing when the offer was filed but was not included in the offer but must be accepted as to other tracts entirely surrounded by land not available for leasing, and it is improper to hold for cancellation a lease issued only for such isolated tracts.

Duncan Miller, A-28767 (Supp.) (Oct. 10, 1962)

"Surrounding land", as used in a departmental regulation requiring that noncompetitive oil and gas lease offers include at least 640 acres unless a lesser acreage sought for leasing is surrounded by land not available for leasing, is properly construed as referring to encircling land which adjoins the land sought for leasing along common boundary lines but not to cornering land.

Duncan Miller, A-29057 (Nov. 20, 1962)

An oil and gas lease offer for separate tracts of land comprising less than 640 acres in the aggregate is properly allowed as to one or more tracts which are surrounded by land unavailable for leasing and properly rejected as to another tract which adjoins land available for leasing when the offer was filed but not included in the offer.

Adele J. Young, A-29090 (Dec. 7, 1962)

TERMINATION

An assignment of an oil and gas lease will not be approved, where, prior to the filing of the assignment, the lease has terminated due to the cessation of production and the lack of reasonable diligence to restore such production.

James P. Psaltis, A-28867 (May 7, 1962)

The automatic termination provision in section 31 of the Mineral Leasing Act, as amended, does not apply to a situation where, due to other contingencies, additional rent may become due on a date other than the anniversary date of a lease.

C. W. Trainer, A-28895 (June 4, 1962) 69 I. D. 81

OIL AND GAS LEASES--Continued

TERMINATION --Continued

Unitized oil and gas leases not included in a participating area are not subject to automatic termination under section 31 of the Mineral Leasing Act if there is a producing or producible well any where in the unit area.

The Ohio Oil Company et al., A-29154 (July 13, 1962)

Unitized oil and gas leases not included in a participating area are not subject to automatic termination under section 31 of the Mineral Leasing Act if there is a producing or producible well anywhere in the unit area.

Sinclair Oil and Gas Company, A-29170 (July 13, 1962)

Termination of an oil and gas lease subject to the act of July 29, 1954, is required for failure to pay the annual rental in advance on or before the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities.

Macson Oil Company, A-28970 (July 30, 1962)

Under section 17 of the Mineral Leasing Act, as amended by the Act of August 8, 1946, a 5-year noncompetitive oil and gas lease terminates by operation of law if the record titleholder fails to apply for an extension of the lease within 90 days before the expiration of the initial 5-year period for which it was issued.

Duncan Miller, A-28846 (Sept. 14, 1962)

UNIT AND COOPERATIVE AGREEMENTS

All the leases included within a unit agreement are made one lease as far as production is concerned. Consequently, actual production on any lease in the unit is constructive production on all other leases in the unit.

A unitized lease shall not be subject to automatic termination under section 31 of the Mineral Leasing Act if there is a producing or producible well anywhere on the unit.

Automatic Termination of Unitized Leases For Failure to Pay Rentals, M-36629 (June 25, 1962) 69 I.D. 110

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS --Continued

Where lands covered by a noncompetitive oil and gas lease are included within the limits of a known geologic structure of a producing oil field during the initial 5-year term of the lease and during the same period the lease is committed to an approved unit agreement under which production in paying quantities was had on its effective date and since then, an application for a 2-year extension of the lease under section 17 of the Mineral Leasing Act, filed shortly before the end of the initial 5-year term of the lease, is properly rejected on the ground that production under the unit agreement during the term of the lease continued the lease for as long as it remains subject to the unit agreement.

Pan American Petroleum Corporation, A-28832 (June 27, 1962)

Unitized oil and gas leases not included in a participating area are not subject to automatic termination under section 31 of the Mineral Leasing Act if there is a producing or producible well anywhere in the unit area.

Sinclair Oil and Gas Company, A-29170 (July 13, 1962)

Unitized oil and gas leases not included in a participating area are not subject to automatic termination under section 31 of the Mineral Leasing Act if there is a producing or producible well any where in the unit area.

The Ohio Oil Company et al., A-29154 (July 13, 1962)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

NONMINERAL ENTRIES AND DISPOSALS

Homestead applications for Oregon and California railroad grant lands are properly rejected when the evidence indicates that the lands are more suitable for timber production than for cultivated crop production.

Warren H. Goss, Neil N. Sumner, A-28834 (Sept. 19, 1962)

PATENTS AND COPYRIGHTS

Section 6 of the Coal Research Act of July 7, 1960 (74 Stat. 337, 30 U.S.C. 666) requires that patents on inventions resulting from Government-financed research and development work under the Act be available to the general public without royalty or other restriction.

Section 4b of the Saline Water Conversion Act of September 22, 1961 (75 Stat. 628, 42 U.S.C. 1954b) requires that patents on inventions resulting from Government-financed research and development work under the Act be available to the general public without royalty or other restriction.

Section 4 of the Helium Act Amendments of September 13, 1960 (74 Stat. 920, 50 U.S.C. 167b) requires that patents on inventions resulting from Government-financed research and development work under the Act be available to the general public without royalty or other restriction.

Section 6 of the Coal Research Act of July 7, 1960 (74 Stat. 337, 30 U.S.C. 666) requires the Secretary to take steps to assure that background patents essential to the practice of patents or the use of processes resulting from research and development contracts issued under the Act be available to the general public on reasonable terms.

Section 4b of the Saline Water Conversion Act of September 22, 1961 (75 Stat. 628, 42 U.S.C. 1954b) requires the Secretary to take steps to assure that background patents essential to the practice of patents or the use of processes resulting from research and development contracts issued under the Act be available to the general public on reasonable terms.

Section 4 of the Helium Act Amendments of September 13, 1960 (74 Stat. 920, 50 U.S.C. 167b) requires the Secretary to take steps to assure that background patents essential to the practice of patents or the use of processes resulting from research and development contracts issued under the Act be available to the general public on reasonable terms.

Patent Requirements of the Coal Research Act, Saline Water Conversion Act and Helium Act, M-36637 (May 7, 1962) 69 I.D. 54

PATENTS OF PUBLIC LANDS

GENERALLY

Where the Department has clear-listed land to the Territory of Alaska under a congressional grant, it has no further jurisdiction over the land.

Klukwan Iron Ore Corporation, A-28860 (Aug. 15, 1962)

PATENTS OF PUBLIC LANDS--Continued

AMENDMENTS

The Department has no authority to amend patents issued for lands sold under the Public Sale Law with reservations to the United States of the oil and gas deposits therein where the patentee, prior to the issuance of the patents, took no action to disprove the classification of the lands as valuable for oil and gas and where the Geological Survey reports the lands to be prospectively valuable for such deposits.

Prior Land Company, Inc., A-28620 (Jan. 30, 1962)

The Department will not entertain a petition to amend a patent to eliminate a reservation to the United States of minerals pursuant to the provisions of the act of July 17, 1914, where the patent has been outstanding for over $7\frac{1}{2}$ years and where the patentee has acquiesced in the reservation.

Donald K. Miller, A-28774 (Aug. 7, 1962)

EFFECT

A patentee of public land takes according to the actual survey on the ground notwithstanding any error in the patent description as to course or distance or quantity of land stated to be conveyed.

Ingrid T. Allen, A-28638 (May 24, 1962)

This Department has no jurisdiction over land to which patent has issued and applications for rights-of-way over such land must be rejected.

Flordia State Road Department, A-28914 (June 21, 1962)

RESERVATIONS

The Department has no authority to amend patents issued for lands sold under the Public Sale Law with reservations to the United States of the oil and gas deposits therein where the patentee, prior to the issuance of the patents, took no action to disprove the classification of the lands as valuable for oil

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS --Continued

and gas and where the Geological Survey reports the lands to be prospectively valuable for such deposits.

Prior Land Company, Inc., A-28620 (Jan. 30, 1962)

The Department will not entertain a petition to amend a patent to eliminate a reservation to the United States of minerals pursuant to the provisions of the act of July 17, 1914, where the patent has been outstanding for over 7½ years and where the patentee has acquiesced in the reservation.

Donald K. Miller, A-28774 (Aug. 7, 1962)

SUITS TO CANCEL

The Department will not recommend that a suit to set aside a clear list of land to the Territory of Alaska be instituted where a protest against the selection is not received until after the clear list has issued, where no Government interest is involved, and where the Government is under no duty to the protestant.

Klukwan Iron Ore Corporation, A-28860 (Aug. 15, 1962)

PITTMAN ACT

When a decision of the Director, Bureau of Land Management, grants to an applicant for lands under the Pittman Act the election of appealing his decision to the Secretary or supplying necessary additional data to complete her deficient application, and the applicant does both, the case on appeal will be remanded to the Director for appropriate action on the supplemented application.

Dorothy R. Notley, A-28755 (Jan. 29, 1962)

PITTMAN ACT--Continued

Final proof of water development and agricultural cropping under a Pittman Act permit which fails to show the harvesting of any crop and only the planting and production of very small amounts of hay or grain that could not be economically feasible because of the high costs of irrigation is properly rejected for want of compliance with the cropping requirements of the Pittman Act.

Where the raising of certain crops in the general area of a Pittman Act entry has been attempted only on a small scale experimental basis and has not yielded any substantial commercial production, experiments with similar crops on the permit land which have not produced a profitable harvest do not meet the requirement of the pertinent regulation that a crop has been raised which "will satisfy the Secretary of the Interior that in time and under ordinary circumstances profitable crops of some sort can be produced from the land."

Where a Pittman Act permittee has not substantially complied with the requirements of the applicable regulation for the raising of a crop during the 2 or 4-year term of his permit, he is not entitled to equitable adjudication of his case.

Richard B. Washburn, A-28939 (Aug. 10, 1962)

A Pittman Act application is properly rejected for land within a basin for which there is a known supply of underground water.

Louis Adams, A-28912 (Aug. 16, 1962)

POTASSIUM LEASES AND PERMITS

PERMITS

The filing of an application for a prospecting permit under the act of February 7, 1927, does not vest in the applicant any rights which preclude the Department from considering his application under regulations adopted after such filing.

An applicant for a potassium permit is properly required to comply with requirements for paying rental and submitting a bond although the requirements were not in effect at the time he filed his application.

Leota H. Payne, A-29013 (Sept. 20, 1962)

POTASSIUM LEASES AND PERMITS--Continued

RENTALS

An applicant for a potassium permit is properly required to comply with requirements for paying rental and submitting a bond although the requirements were not in effect at the time he filed his application.

Leota H. Payne, A-29013 (Sept. 20, 1962)

PRACTICE BEFORE THE DEPARTMENT

GENERALLY

Where a complaint in a Government contest is served upon one who has been represented as being the attorney for the contestee, the contest is properly decided by default against the contestee where an answer to the complaint is filed more than 30 days after service of the complaint upon the attorney.

United States v. Carl D. Jensen, A-28789 (Aug. 6, 1962)

PRIVATE EXCHANGES

GENERALLY

The Department's policy statement of February 14, 1961, which states that no private exchange will be consummated except where it is shown that a compelling reason exists for acquiring the offered lands to augment a long range Federal resource management program, is not to be read as compelling the Secretary by disapprove an exchange, absent a showing of compelling need to acquire the offered lands, even though he determines in consideration of all circumstances of the case that the exchange will be in the public interest.

W. Dalton La Rue, Sr., et al., A-29309 (Aug. 14, 1962) 69 I.D. 121

PRIVATE EXCHANGES--Continued

GENERALLY--Continued

A stock-driveway withdrawal removes the land from disposal so that a private exchange application for such land is properly rejected even though the driveway may no longer be used.

R. O. Sewell, A-28908 (July 30, 1962)

CLASSIFICATION

Where an exchange of private land for public land is rejected upon the basis of an existing departmental policy and that policy is superseded by a new departmental policy while the case is on appeal, the case will be remanded for reconsideration pursuant to the new policy.

Frank Bond & Son, Inc., A-28656 (Apr. 27, 1962)

EQUAL VALUES

Where nothing in the record shows that a proper appraisal was made of the offered and selected lands in a private exchange, the case will be remanded for a review of the appraisals.

Frank Bond & Son, Inc., A-28656 (Apr. 27, 1962)

When it is determined that a proposed exchange of privately owned land for public land is in the public interest, the appraisal of the offered and selected lands will be reexamined for conformity with existing policies and conditions required by the Department in private exchanges.

Winfred Kimber et al., A-28625 (Sept. 20, 1962)

An application to exchange privately-owned land for public land is properly rejected when it is apparent that the selected land greatly exceeds the offered land in value at the time of the adjudication of the application; there is no basis for determining the values as of a time preceding the filing of the application by almost two years, merely because the applicant had filed an earlier application for the selected land at that time.

Bjarne Pederson, A-28844 (Sept. 20, 1962)

PRIVATE EXCHANGES--Continued

PROTESTS

Where a proposed private exchange meets the statutory requirement of equal value between the offered and the selected land and it appears that the exchange will be in the public interest, protests against the exchange are properly dismissed.

A protest by an oil and gas lessee against a proposed private exchange is properly dismissed where the exchange, if consummated, will reserve title to the oil and gas deposits in the selected land covered by the lease in the United States for so long as the oil and gas lease remains in force.

W. Dalton La Rue, Sr., et al., A-29309 (Aug. 14, 1962) 69 I.D. 120 & 121

PUBLIC INTEREST

An application for private exchange is properly rejected in the absence of a positive showing of benefit to the United States to be gained from acquisition of the offered land.

El Paso Natural Gas Company, A-28945 (July 18, 1962)

A private exchange application is properly rejected when the allowance of the application would not benefit the public interest, the selected land being surrounded by public land and the offered land being surrounded by privately-owned land.

Joe Capurro, A-28933 (July 25, 1962)

The benefit to the public interest which must be shown before a private exchange may be approved is not limited to the interest of the public in the management of grazing lands. Such an exchange may be approved if it is determined, on balance, that the public generally will be benefited through the acquisition of the selected land by the exchange applicant, provided land of equal value is offered in exchange.

The fact that consummation of a private exchange may adversely affect the livestock operations of protestants who have enjoyed grazing privileges on the selected land does not warrant a determination that the exchange is not in the public interest.

W. Dalton La Rue, Sr., et al., A-29309 (Aug. 14 1962) 69 I.D. 120

PRIVATE EXCHANGES--Continued

PUBLIC INTEREST--Continued

The rejection of an application for private exchange will be sustained when the applicant fails to disprove the factual conditions which support the conclusion that the proposed exchange would not be in the public interest.

E. L. Cord, A-28801 (Aug. 30, 1962)

PUBLIC LANDS

CLASSIFICATION

Public land which is the only public land in the vicinity of a proposed reservoir and which is well suited for public recreation uses is properly refused a classification as proper for acquisition in satisfaction of a lieu selection right.

The authority conferred upon the Secretary of the Interior by section 7 of the Taylor Grazing Act to classify public land as proper for disposition imposes upon him the responsibility of determining whether the public interest would be served by classifying certain land as suitable for disposition in satisfaction of a lieu right of selection.

Linn Land Company, A-28765 (July 12, 1962)

State selections in satisfaction of a legislative grant of public land are preferred over conflicting private applications filed at about the same time or subsequently; therefore it is proper to reject small tract applications filed for land in a State selection where there is no showing that allowing the State selection would be less in the public interest.

Olaf H. Iverson, Sherman E. Tucker, A-28810 (July 12, 1962)

PUBLIC SALES

GENERALLY

The conservation policy announced on February 14, 1961, does not require the cancellation of a public sale held prior to the

PUBLIC SALES--Continued

GENERALLY--Continued

announcement because, after the date of the sale, the market value of the land has increased substantially over its value on the date of sale.

The consummation of a public sale, under the conservation policy announced on February 14, 1961, will depend upon whether the amount bid or offered by the successful purchaser is equal to or over the fair market value of the land on the date of the sale.

Autrice C. Copeland, A-28454 (Supp.) (Feb. 27, 1962) 69 I.D. 1

Where the case record on a public sale indicates that land may have been offered for sale at less than the fair market value of the land, the case will be remanded for a reappraisal and further proceedings in light of the reappraisal.

Maria T. A. Ruthling et al., A-28538 (Mar. 15, 1962)

Public land offered for sale at public auction may be retained in public ownership even after the bidders have been declared the purchasers since the Secretary has discretion to determine whether it is proper to sell public land and an applicant for sale or any bidder acquires no rights in land offered for sale in advance of the issuance to him of a cash certificate.

Where it appears that the value of land offered at public sale may have appreciated since the date of appraisal and protests have been filed against the sale, it is appropriate to remand the case for consideration of these factors even though a division of the land has been made among preference right claimants but cash certificates have not yet been issued.

Lee Alfred Paoli and Marie Paoli, A-28566 (Mar. 27, 1962)

The consummation of a public sale held in 1959 will, under the conservation policy announced on February 14, 1961, depend upon whether the amount bid or offered by the successful purchaser is equal to or over the fair market value of the land on the date of the sale, and where evidence on this point is lacking the case will be remanded for an appraisal as of the date of the sale.

William E. Davis, A-28747 (Apr. 25, 1962)

PUBLIC SALES--Continued

GENERALLY--Continued

An applicant for the public sale of land is not entitled to a hearing under the Administrative Procedure Act or under the Constitutional requirements of due process.

Monolith Portland Cement Company, A-28728 (July 11, 1962)

The consummation of a public sale, under the conservation policy announced on February 14, 1961, will depend on whether the amount bid or offered by the successful purchaser is equal to or over the fair market value of the land on the date of the sale.

Rupert A. Chisholm, Herbert E. Counihan, A-28713 (July 31, 1962)

An application for public sale of land withdrawn for a stock driveway is properly rejected; action on the application will not be suspended to await possible revocation of the withdrawal order.

Elmo L. Day, A-28978 (Aug. 2, 1962)

Public land subject to reclamation withdrawal cannot be sold at public sale and sale applications filed while the withdrawal remains in force are properly rejected.

Consumers Agency, Inc., A-28899 (Aug. 3, 1962)

Public land which contains hot springs not necessarily containing water possessing curative properties is withdrawn from disposition under the public land laws by Executive Order No. 5389 so that an application for public sale of such land is properly rejected.

Carl and Alvina Kidman, A-28898 (Aug. 8, 1962)

Where, under a sale held in 1958, the market value of land in a particular area is shown to be fairly constant, an appraisal of land, approved some two and one-half months prior to the date of sale, need not be reviewed under the new land conservation policy.

Angela Mathews Boos, A-28712 (Sept. 21, 1962)

PUBLIC SALES--Continued

GENERALLY--Continued

Neither the anti-speculation policy announced in February 1960 nor the land conservation policy announced on February 14, 1961, which superseded it, necessarily requires the cancellation of a public sale held prior to either announcement because, after the date of sale circumstances which brought about the formulation of the policy may have developed with respect to the land previously offered for sale.

The consummation of a public sale held in 1959 under which a contiguous landowner offered three times the appraised value of the land, which offer was lower than the high bid at the sale, will depend upon whether the contiguous land owner's bid is equal to three times the fair market value of the land on the date of sale.

Bernard E. Loper, Jr., et al., A-28730 (Sept. 24, 1962)

The consummation of a public sale held prior to February 14, 1961, when the new land conservation policy was announced, will depend upon whether the land was properly classified as suitable for public sale and whether the announced appraised value of the tract represents the fair market value of the land on the date of the sale.

Paul T. Walton, A-28669 (Sept. 24, 1962)

The consummation of a public sale under the conservation policy announced on February 14, 1961, will depend upon whether the amount bid or offered by the successful purchaser is equal to or over the fair market value of the land on the date of the sale.

Where a public sale was vacated on the ground that values had gone up in the area of the land offered for sale in the period following the date of appraisal, and there is no evidence in the record of such an increase, the case will be remanded to determine whether the amount bid by the high bidder is equal to or in excess of the fair market value of the land on the date of the sale.

James Howard Waterhouse, A-28646 (Sept. 24, 1962)

The consummation of a public sale held in 1959 will not be permitted under the land conservation policy announced on February 14, 1961, where the record shows that the land was offered for sale at an appraised value far below its fair market value and the high bid made for the land did not exceed the appraised value.

Harvey M. Jacobs and Jean E. Jacobs, A-28775 (Nov. 5, 1962)

PUBLIC SALES--Continued

GENERALLY--Continued

A decision by the Department declaring the cancellation of a public sale for certain reasons to be improper does not preclude a subsequent determination that the sale should be cancelled for a different reason.

A public sale will be cancelled where it appears that the lands were offered for sale at an erroneously appraised price and the bid of the successful purchaser was lower than the fair market value at the date of the sale.

Leland M. Lucas, A-29228 (Dec. 10, 1962)

Lands valuable for certain minerals which are locatable under the mining laws are not subject to public sale.

William W. Cheetham, A-29098 (Dec. 10, 1962)

APPLICATIONS

The filing of an application for the sale of public land at auction does not vest in the applicant any right or privilege which precludes the Department from rejecting the application in the exercise of the discretion which the public sale law vests in the Secretary of the Interior.

Monolith Portland Cement Company, A-28728 (July 11, 1962)

A public sale application is properly rejected where all the land applied for is included in an outstanding homestead entry.

Harry Alvon Knotts, A-28797 (July 27, 1962)

Land subject to a second form withdrawal for reclamation purposes is not available for public sale so that a public sale application for such land is properly rejected for this reason.

Atherton S. Burlingham and Hilda S. Burlingham, A-29029 (Aug. 6, 1962)

The moratorium on filing certain applications for unclassified public lands also precluded the acceptance of a proposed amendment made during the moratorium period to substitute different lands for those described in a public sale application filed before the moratorium.

Nancy M. Rice, A-29076 (Dec. 10, 1962)

PUBLIC SALES--Continued

AWARD OF LANDS

An award of lands offered at public sale apportioning the lands between two preference-right claimants will not be disturbed where there is no evidence that the award was unfair or based upon material error, or that it was improperly made.

Barbarita Montoya, A-28885 (July 9, 1962)

A division of land offered for public sale by the Director of the Bureau of Land Management among three preference right bidders on a basis fully justified by the circumstances will be confirmed on appeal.

Maria T. A. Ruthling et al., A-28538 (Supp.) (Sept. 21, 1962)

CLASSIFICATION

An application for public sale of public land is properly rejected when the land is valuable for recreational purposes and fire control and disposal would complicate range use and administration.

Paul H. Orgish and Freda Eliza Orgish, A-28560 (Feb. 12, 1962)

A decision of the Director of the Bureau of Land Management fully supported by evidence adduced at a public hearing ordered by the Director that certain public land should be classified as suitable for public sale and not for sale or lease for recreation and public purposes will not be disturbed.

Hunting and Fishing Improvement Club of Stanislaus County et al., A-28776 (Apr. 12, 1962)

An application for public sale of public land which was rejected by the Bureau of Land Management on the basis of then existing Departmental policy governing public sales will be remanded for reconsideration when after an appeal to the Secretary has been taken the Departmental policy is revised.

R. A. Ellsworth, A-28627 (Apr. 27, 1962)

PUBLIC SALES--Continued

CLASSIFICATION--Continued

Where a public sale application is rejected on the basis of the Department's anti-speculation policy issued in 1960, and that policy is superseded by the new land conservation policy announced on February 14, 1961, the case will be remanded for reconsideration under the latter policy.

Monolith Portland Cement Company, A-28728 (July 11, 1962)

An application for public sale of land which provides access to a grazing area and is also useful as a holding area and watering place of livestock drifting off the grazing area is properly rejected because it is in the public interest to retain the land in federal ownership.

Jerry P. Doles et al., A-29034 (Aug. 27, 1962)

In the absence of convincing evidence that the wrong land was classified, a public sale application is properly rejected where the land applied for is classified as more valuable for public recreational purposes than for disposal at public sale.

William McGillvray, A-28906 (Sept. 18, 1962)

It is proper to refuse to sell at public sale an isolated tract of public land part of which the Geological Survey finds to be valuable for phosphate and on which part the exercise of surface rights would unreasonably interfere with operations under the mineral leasing laws and the remaining part of which in the public interest should not be sold at the present time.

Clifford P. Hansen, A-28816 (Sept. 21, 1962)

When lands applied for under the public sale law are classified as unsuitable for disposition because this would require reduction of existing grazing privileges, complicate the land pattern and administration and adversely affect the livestock operations of present range users, the classification will not be disturbed in the absence of substantial, positive evidence that the classification is erroneous.

Cornelius B. Wedel, A-28932 (Sept. 25, 1962)

PUBLIC SALES--Continued

PREFERENCE RIGHTS

The assertion of a preference right to purchase public land offered at public sale by an individual is properly rejected where the adjoining land on which the preference right is based is owned during the preference right period not by the individual but by a family corporation composed of the individual, his wife and a trustee for their minor children, even though it is asserted that the land was transferred to the corporation through mistake.

Rupert A. Chisholm, Herbert E. Counihan, A-28713 (July 31, 1962)

A certificate of the county recorder of deeds showing ownership of adjoining land in a preference-right claimant at a time well before the sale of public land which he desires to purchase does not meet the requirement of the public sale regulation that proof of ownership of contiguous land must be shown at or within 30 days after the date of the sale.

Placido Mirabal, A-29021 (Aug. 27, 1962)

The consummation of a public sale held in 1959 under which a contiguous landowner offered three times the appraised value of the land, which offer was lower than the high bid at the sale, will depend upon whether the contiguous land owner's bid is equal to three times the fair market value of the land on the date of sale.

Bernard E. Loper, Jr., et al., A-28730 (Sept. 24, 1962)

SALES UNDER SPECIAL STATUTES

A request for a preference right to purchase certain town lots in Anchorage, Alaska, is properly refused when the circumstances of the sale do not permit the preference right applicant to qualify under the terms of the regulations which implement the act of March 12, 1914, and do not permit the sale to be made under the act of May 3, 1934.

J. Glen Cassity, A-28987 (Aug. 17, 1962)

An application to purchase public land under the act of March 3, 1909, filed by an adjoining landowner after the end of the preference right period is not to be rejected merely because there are other prior applications on file which have also been presented after the end of the preference right period, but it is to be suspended pending a determination of

PUBLIC SALES--Continued

SALES UNDER SPECIAL STATUTES--Continued

whether any prior applicants are entitled to purchase the land.

Raminder S. Garewal, A-28746 (Sept. 25, 1962)

The Alaska Public Sale Act and the departmental regulations and certificates of purchase issued under the act require that proof of use of the land for the purpose for which it was classified for sale be submitted within three years after issuance of a certificate of purchase and the Department has no authority to accept proof submitted after the three-year period.

Henry C. Durham, A-29032 (Oct. 11, 1962)

A protest against the purchase price of public land offered to the City of Henderson, Nevada, under the special legislation of May 14, 1956, is properly dismissed when it appears that the purchase price reflects the fair market value of the land on the date in 1961 on which notice was given to the City of its opportunity to purchase the land; the City cannot be permitted to buy the land on the basis of an unofficial estimate of value made in 1958.

City of Henderson, A-29471 (Dec. 5, 1962)

A preference right under subsection 2(b) of the act of August 3, 1955, authorizing the sale of certain lands in Oklahoma reconveyed to the United States by the Choctaw-Chickasaw Indian Nations, is provided for persons lawfully and continuously occupying such lands since April 30, 1949, or earlier, and the denial of such a claim will be set aside where a claimant presents persuasive evidence of his lawful and continuous occupancy during the time in question.

William M. Kaniatobe, A-29085 (Dec. 5, 1962)

RAILROAD GRANT LANDS

An applicant for patent to railroad grant land is properly required to submit evidence establishing that the land was sold by a predecessor carrier to an innocent purchaser for value and in the absence of such evidence the application is properly rejected.

Southern Pacific Company, A-29037 (Oct. 17, 1962)

RECREATION AND PUBLIC PURPOSES ACT

A decision of the Director of the Bureau of Land Management fully supported by evidence adduced at a public hearing ordered by the Director that certain public land should be classified as suitable for public sale and not for sale or lease for recreation and public purposes will not be disturbed.

Hunting and Fishing Improvement Club of Stanislaus County et al., A-28776 (Apr. 12, 1962)

An application to purchase public land as an addition to a university campus is improperly rejected when it appears that disposal of the land to the university will be in the public interest and that the land described in the application to purchase is actually needed for the applicant's purposes.

The purchase price established for the sale of land as an addition to a university campus will not be disturbed where it is based upon a thorough and well-documented appraisal.

Alaska Methodist University, A-28820 (Sept. 25, 1962)

REGULATIONS

GENERALLY

Where a party is to be deprived of a statutory preference right because of his failure to comply with a requirement of a regulation, that regulation should be so clear that there is no basis for disregarding his noncompliance.

Canada Southern Oils, Inc., and W. C. McBride, Inc., A-28941 (Nov. 16, 1962)

An oil and gas lease offer which does not comply with the mandatory requirement of an oil and gas regulation that the filing fee and advance rental must be submitted as separate remittances must be rejected without priority, and an offeror's unfamiliarity with the regulation, which is not set out in the oil and gas lease offer form required to be used by offerors, does not excuse noncompliance with the regulation.

Ernest O. Tullis, A-29678 (Dec. 27, 1962)

REGULATIONS --Continued

APPLICABILITY

Where a regulation is amended to remove the requirement that entrymen on or claimants of lands which are determined to be prospectively valuable for oil or gas after entry but before the entry or claim has been perfected must file a waiver of rights to the oil and gas for which the land has been found prospectively valuable and to substitute a different procedure in such cases, the provisions of the amended regulation will be applied to claimants and entrymen who have appealed to the Secretary from the demand made under the former regulation that they file a waiver, if there are no adverse rights or if the interest of the United States will not be prejudiced thereby.

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962) 69 I.D. 71

VALIDITY

The regulation calling for the rejection of oil and gas lease offers where the acreage in those offers, when added to the acreage in outstanding leases and pending lease offers of the offerors, would exceed the maximum acreage limitation on leases set forth in the Mineral Leasing Act is designed to insure the proper administration of the act and is well within the authority of the Secretary of the Interior as the administrator of that act.

Melvin A. Brown, A-28923 (Aug. 31, 1962) 69 I.D. 131

RIGHTS-OF-WAY

GENERALLY

Where express statutory provisions govern the method of releasing land from a State highway department material site, the land remains part of the site until released in accordance with statute.

This Department may not accept a relinquishment of a material site effective many years before the date the relinquishment is filed.

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

The execution of a conveyance is not essential to establish a material site; it can be created by Departmental approval of a map of the material site.

There can be no notice of cessation of the need of a State highway department for a material site where such a notice asserted to have been mailed, is never received by the Bureau of Land Management.

J. M. Keeney et al., A-28856 (Aug. 6, 1962)

APPLICATIONS

This Department has no jurisdiction over land to which patent has issued and applications for rights-of-way over such land must be rejected.

Florida State Road Department, A-28914 (June 21, 1962)

ACT OF MARCH 3, 1891

An application for a right-of-way for a well site and pipeline is properly rejected for the development of water discovered in drilling for oil and gas under an oil and gas lease issued under the Mineral Leasing Act.

Otis A. Roberts, A-29020 (June 12, 1962)
69 I.D. 91

ACT OF FEBRUARY 15, 1901

An application for a right-of-way for a well site and pipeline is properly rejected for the development of water discovered in drilling for oil and gas under an oil and gas lease issued under the Mineral Leasing Act.

Otis A. Roberts, A-29020 (June 12, 1962)
69 I.D. 91

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 25, 1920

Where an applicant for a right-of-way for a pipeline across public lands pursuant to sec. 28 of the Mineral Leasing Act constructs the pipeline under permission to do so prior to the approval of the right-of-way, the lands through which the right-of-way passes are subject to entry and disposition and where entries are filed, allowed or patented after the pipeline is constructed but prior to the approval of the right-of-way, neither the allowance of an entry, the final certificate nor the patent will contain a reservation of the right-of-way for the pipeline since the pertinent regulation (43 CFR 101.4) authorizes the insertion of reservation only where the right-of-way has been approved prior to the allowance of an entry; however, the right-of-way will be allowed and the parties left to resolve their disputes, if any, in courts of competent jurisdiction.

Salt Lake Pipe Line Company, A-28981 (Oct. 8, 1962)

RULES OF APPROXIMATION

The rule of approximation is an administrative rule and one seeking to acquire public land can not insist upon its application as a matter of right. Where no equity is shown, the rule of approximation will not be applied.

One will not be permitted to select a 40-acre tract upon the basis of a selection right under the act of July 1, 1898, for 24.62 acres and payment of $1.25 per acre for the remainder under the rule of approximation.

Ferris F. Boothe, A-28854 (Aug. 16, 1962)

RULES OF PRACTICE

APPEALS

Generally

When a decision of the Director, Bureau of Land Management, grants to an applicant for

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

lands under the Pittman Act the election of appealing his decision to the Secretary or supplying necessary additional data to complete her deficient application, and the applicant does both, the case on appeal will be remanded to the Director for appropriate action on the supplemented application.

Dorothy R. Notley, A-28755 (Jan. 29, 1962)

Where a party to an appeal has previously requested reconsideration of a decision and the Board has issued a decision upon such reconsideration, the Board is without authority to entertain a request by that party for a further reconsideration.

Where a request for reconsideration of a decision of the Board is not persuasive of error by the Board, the decision will be affirmed.

Appeal of Merritt-Chapman & Scott Corporation IBCA-240 (Mar. 15, 1962) 69 I. D. 11

The Board of Contract Appeals lacks jurisdiction to reform or rescind contracts.

Appeal of Duncan Miller, IBCA-305 (Apr. 18, 1962) 69 I. D. 25

Where a request for reconsideration of a decision of the Board is not persuasive of error by the Board, the decision will be affirmed. Where the Board finds on reconsideration that its determinations under its prior decision as to the amounts of equitable adjustments due under the Changes clause were not sufficient, the Board will modify its decision accordingly.

Appeal of Henly Construction Company, IBCA-249 (Apr. 27, 1962) 69 I. D. 43

The Board in its discretion will permit the introduction of newly discovered evidence which was not available to the contractor at the time of the original oral hearing of an appeal from the contracting officer's decision.

A motion for reconsideration is denied where the additional evidence presented is not persuasive of error by the Board, and no other matters are advanced that were not fully

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

considered by the Board in its original decision.

Appeal of Fred E. Hicks Construction Company, IBCA-271 (May 11, 1962)

Where a request for reconsideration of a decision of the Board is not persuasive of error by the Board, the decision will be affirmed.

Appeal of William L. Warfield Construction Company, IBCA-196, 202, 206 (July 3, 1962)

Where a request for reconsideration is not persuasive of error by the Board, the decision will be affirmed.

Appeal of Brooks and Mixon, IBCA-277 (Aug. 14, 1962) 69 I. D. 119

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal. He may, even in the absence of an appeal, take up any matter pending in any land office and dispose of it without waiting for a decision by the local land office.

Angela Mathews Boos, A-28712 (Sept. 21, 1962)

Service of a decision by a hearing examiner in a grazing case upon an attorney of record is deemed to be service of the decision upon the person whom the attorney represents.

Philip Coyne et al., A-29539, A-29648 (Sept. 21, 1962)

When it appears that a decision of the Director of the Bureau of Land Management was served on the appellant by delivery of a copy of the decision by certified mail to the appellant's address of record, and the return receipt card shows that the decision was delivered at that address, the 30-day period allowed for filing a notice of appeal begins to run from the date the decision was delivered to the record address and the late filing of a notice of appeal will not be waived on the ground that the appellant was not at home on the delivery date and did not actually receive the notice until several days later.

Virgie Lee et al., A-29657 (Sept. 28, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Under a change order for elimination of part of the work, where the contracting officer considers but omits to complete the equitable adjustment of the time allowed for performance of the remainder of the work, and the contractor has not appealed as to that omission, the Board will take jurisdiction de novo as to such errors or omissions and will determine the equitable adjustment.

The Board will generally remand a claim not previously presented to the contracting officer. Under the unusual circumstances surrounding this appeal, the claim will not be remanded, since the ends of justice would not be served when such remand would cause further delay in the disposition of the claim.

Appeal of Eastern Maintenance Company, IBCA-275 (Nov. 29, 1962) 69 I. D. 215

The Department of the Interior Board of Contract Appeals is not an intermediate board, and further appeals may not be taken within the Department from the Board's decisions. Such decisions are final for the Department (43 CFR 4. 4).

Appeal of Allied Contractors, Inc., IBCA-265 (Dec. 10, 1962) 69 I. D. 222

The purpose of the holding of conferences pursuant to 43 CFR 4. 9 is the simplification and sharpening of issues; the possibility of obtaining stipulations, admissions of facts, and the introduction of documents; the determination of the number of witnesses and the limitation of expert witnesses, if any; and the discussion and consideration of such other matters as may aid in the disposition of appeals.

Appeal of Ray D. Bolander Company, Inc., IBCA-331 (Dec. 14, 1962) 69 I. D. 223

Where an application to make homestead entry is rejected and where, after filing a timely notice of appeal, the applicant moves for leave to amend her application and requests additional time within which to submit a statement of reasons in support of the appeal, the motion has the effect of making the appeal moot and the matter will be remanded to the Bureau of Land Management for consideration of the request to amend, and no extension of time within which to submit a statement of reasons will be granted.

Peggy M. Kater, A-29840 (Dec. 27, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal

An appeal to the Secretary will be dismissed where the applicant moves to dismiss the appeal.

Texaco, Inc., A-28890 (Jan. 2, 1962)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

D. L. Cook, A-29080a (Jan. 5, 1962)

Abel C. Chavez, A-29298 (Jan. 16, 1962)

Telford Work, A-29331 (Jan. 26, 1962)

Cecil H. Phillips, A-28963a (Jan. 26, 1962)

William A. Schulte, A-29405 (Mar. 15, 1962)

Hugh McMillan, Shirley H. Weaver, A-29052a (Apr. 2, 1962)

Patricia M. Wright, A-29383 (Apr. 30, 1962)

James E. Dodd, A-29685a (Sept. 20, 1962)

Oscar A. Braun, Josephine S. Braun, A-29339a (Oct. 3, 1962)

Lauren W. Gibbs, R. J. Hollberg, Jr., Joseph Sherman, A-29690 (Oct. 4, 1962)

United States v. Thomas J. Powell, A-29035 (Nov. 9, 1962)

Sheridan L. McGarry, A-29817 (Nov. 19, 1962)

Arizona Land Title and Trust Company, A-28771a (Dec. 19, 1962)

Appeals to the Secretary will be dismissed when the appellant withdraws the applications which were the subject of the appeals.

Samuel L. Phillips, A-29152, A-29180 (Jan. 22, 1962)

Gerald R. Dowd, A-28903 (Jan. 30, 1962)

William Elvin Pine, A-28915 (May 7, 1962)

Robert F. Algrem, A-28792 (July 2, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where, after a notice of appeal to the Secretary is filed without giving reasons for the appeal, the appellant notifies the Secretary that it agrees with the decision appealed from and that it will not file a statement of reasons, the appeal will be dismissed.

State of Arizona, A-29189 (Feb. 9, 1962)

An appeal to the Secretary will be dismissed where the appellant confirms that he has not filed a statement of reasons and asks that his appeal be dismissed.

Vada McBride, A-29281 (Mar. 14, 1962)

An appeal to the Secretary from the rejection of an oil and gas offer will be dismissed when the appellants withdraw the offer.

Merrill H. Grix et al., A-28954 (Mar. 21, 1962)

Motion to dismiss a contractor's claim for acceleration is denied since the Board has jurisdiction to decide such claims pursuant to the Changes clause of the Standard Form construction contract.

A claim for loss of profit is without the jurisdiction of the Board and must be dismissed.

Appeal of William L. Warfield Construction Company, IBCA-196, IBCA-202, IBCA-206 (May 3, 1962)

An appeal which was improvidently allowed will be dismissed.

Edna Rose Volk, A-28975a (May 7, 1962)

Where an issue raised by an appeal becomes moot, the appeal will be dismissed.

Hines Gilbert Gold Mines Company, A-28733 (May 18, 1962)

Appeals will be dismissed when the parties notify the Board that they have reached agreement on an equitable settlement to carry out decisions of the Board.

Appeals of Erhardt Dahl Andersen, IBCA-223, IBCA-229 (May 25, 1962) 69 I.D. 70

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where before an appeal from a decision holding that an oil and gas lease had expired at the end of its tenth year and denying approval to a request for a partial assignment is decided, the two year extension period for which the lease would otherwise have been extended has elapsed, the appeal becomes moot and will be dismissed.

Signal Oil and Gas Company et al., A-28893 (May 25, 1962)

An appeal to the Secretary will be dismissed upon the request of the appellant.

International Paper Company, A-29443 (June 13, 1962)

Erving Wolf, A-29493 (July 23, 1962)

Heirs of Esther McCrea, A-29583 (Sept. 25, 1962)

An appeal will be dismissed by the Board for lack of jurisdiction where the contractor's claim is based on breach of contract, involving expense of defending injunction litigation by third parties against contractor.

Appeal of Ford-Fielding, Incorporated, IBCA-303 (July 2, 1962) 69 I.D.116

A claim for additional compensation for concrete will be dismissed on motion, where the contract provided for measurement of concrete for payment in accordance with neat lines of pre-existing structures on the drawings, and the contractor failed to seek clarification from the contracting officer, before pouring the concrete, as to his later allegations that the pre-existing structures were not in accordance with the neat lines.

Appeal of Flora Construction Company and Argus Construction Company, IBCA-319 (July 19, 1962)

Where the dismissal of an appeal to the Secretary is found to be contrary to a court order, the dismissal of the appeal will be vacated.

Grace E. Hutchins, A-29297(Supp.) (Aug. 14, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal involving a claim for additional compensation under the Changed Conditions clause of a construction contract, based on an overrun in excavation quantities, will be dismissed where the contractor knowingly submitted an improvident unbalanced bid in reliance upon the Government's erroneous estimates; where the conditions actually encountered did not differ materially from those shown on the drawings, specifications and logs of exploration, and such conditions could have been reasonably anticipated from a study of the drawings, specifications and logs of exploration, or an examination of the site.

Appeal of Otis Williams and Company, IBCA-324 (Sept. 5, 1962) 69 I. D. 135

Where the question whether an oil and gas lease is entitled to a two-year extension by virtue of a partial assignment has become moot, an appeal to the Secretary from an adverse decision by the Director of the Bureau of Land Management will be dismissed.

Loretta Inghram et al., A-28964 (Sept. 19, 1962)

As the Federal Range Code for Grazing Districts requires that notice of intention to appeal to the Director of the Bureau of Land Management from a decision of a hearing examiner must be filed within 10 days after the receipt of the hearing examiner's decision by the appellant, it is proper for the Director to dismiss an appeal to him when the notice of intention to appeal was filed after the 10-day period had elapsed or was not filed at all.

Philip Coyne et al., A-29539, A-29648 (Sept. 21, 1962)

An appeal based on claims for costs of unreasonable delay while awaiting the issuance of a change order will be dismissed as constituting an alleged breach of contract over which the Board has no jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-265 (Sept. 26, 1962) 69 I. D. 147

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where an applicant for a desert land entry withdraws her application while an appeal from its rejection is pending, the appeal will be dismissed.

Muriel S. Peet, A-29153a (Oct. 11, 1962)

An appeal to the Secretary from a decision declaring an oil and gas lease to be automatically terminated for failure to pay rental on time will be dismissed to permit consideration of a petition by the appellant to reinstate the lease under the provisions of remedial legislation, subject to the right of the appellant to reinstate his appeal in the event the petition is denied.

Texas National Petroleum Company, A-29580 (Oct. 26, 1962)

An appeal to the Secretary from a decision declaring an oil and gas lease to be automatically terminated for failure to pay rental on time will be dismissed to permit consideration of a petition by the appellant to reinstate the lease under the provisions of remedial legislation, subject to the right of the appellant to reinstate his appeal in the event the petition is denied.

Cities Service Petroleum Company, A-29486 (Nov. 14, 1962)

Where the question as to whether an oil and gas lease is entitled to a two-year extension by subsection 4(d) of the Mineral Leasing Act Revision of 1960 has become moot, an appeal to the Secretary on that question will be dismissed.

Burton W. Hancock, A-29069 (Nov. 20, 1962)

An appeal to the Secretary will be dismissed when the appellant consents to its dismissal.

Harold A. Bither, A-29118 (Dec. 6, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Secretary from a decision declaring an oil and gas lease to be automatically terminated for failure to pay rental on time will be dismissed to permit consideration of a petition by the appellant to reinstate the lease under the provisions of remedial legislation, subject to the right of the appellant to reinstate his appeal in the event the petition is denied.

Ethel K. Mills, A-29818 (Dec. 7, 1962)

An appeal based on claims for additional compensation because of unreasonable delays by the Government will be dismissed, since it alleges breach of contract over which the Board has no jurisdiction.

Appeal of Sooge Construction Company, IBCA-286 (Dec. 11, 1962)

To assure adequate docket control, an appeal will be dismissed without prejudice with leave to reinstate, where both parties indicate that additional claims may be presented by contractor and disposed of by contracting officer in one fell swoop.

Appeal of Weyher Construction Company, IBCA-348 (Dec. 13, 1962)

An appeal is dismissed where a contractor submits a mere notice of appeal, without alleging or subsequently proffering any evidence of error in the contracting officer's decision assessing liquidated damages for failure to perform within the time required.

Appeal of T. E. Gillespie Construction Company, IBCA-333 (Dec. 13, 1962)

Extensions of Time

An appeal to the Director, Bureau of Land Management, is properly dismissed when a request for an extension of time to file a statement of reasons in support of the appeal is not filed within the period allowed for filing the statement of reasons and a request for extension and statement of reasons are filed well after the period allowed.

John I. Kirby, A-29210 (June 29, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Extensions of Time--Continued

An appeal to the Director of the Bureau of Land Management is properly dismissed when a statement of reasons in support of the appeal is not filed within the period allowed for filing such statement and a request for an extension of time to file the statement is not filed until after the expiration of such period.

Fred C. Stewart, A-29209 (June 29, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of the appeal and does not request an extension of time to do so until after the period for filing a statement of reasons has expired.

Hilda M. Warrick et al., A-29359 (Aug. 15, 1962)

Where an application to make homestead entry is rejected and where, after filing a timely notice of appeal, the applicant moves for leave to amend her application and requests additional time within which to submit a statement of reasons in support of the appeal, the motion has the effect of making the appeal moot and the matter will be remanded to the Bureau of Land Management for consideration of the request to amend, and no extension of time within which to submit a statement of reasons will be granted.

Peggy M. Kater, A-29840 (Dec. 27, 1962)

Service on Adverse Party

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to serve a copy of the notice of appeal and the statement of reasons for the appeal on the adverse party named in the decision appealed from.

Erika Shofstall, A-28938 (Feb. 21, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to serve copies of his appeal documents on the adverse party.

B. E. Burnaugh, A-29134 (Mar. 20, 1962)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to serve a copy of his notice of appeal on the adverse party and fails to file a statement of reasons in support of the appeal.

A. C. Caldwell, A-29177 (Apr. 12, 1962)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to serve a copy of his notice of appeal and of his statement of reasons on the adverse party.

United States v. Iris M. Klingbiel, Fred W. Klingbiel, A-29135 (Apr. 26, 1962)

An appeal to the Secretary will be dismissed where the appellant fails to serve a copy of his statement of reasons on the adverse party.

Ethel Severson, A-28957 (Apr. 30, 1962)

Those who submit appeals that are deficient in a vital element that is required by the rules of practice enjoy no more rights than if they had failed to appeal; consequently, when small tract applicants fail to furnish proof of service of copies of their notices of appeal upon an adverse party named in a land office decision appealed from, which rejected the small tract applications, the appeals are properly dismissed and the applications considered invalid, despite a subsequent reversal of the land office decision and a reclassification of the land applied for as suitable for small tract purposes.

Leonard C. Brose et al., A-28650 (May 17, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

An appeal to the Secretary of the Interior will be dismissed where the appellant fails to submit proof that he served the adverse party named in the decision appealed from.

Mary J. Escudero et al., A-28807 (May 17, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed because of the appellant's failure to serve his notice of appeal upon an adverse party within the time allowed by the Department's rules of practice.

Frank E. Granros, A-29213 (June 4, 1962)

An appeal to the Director of the Bureau of Land Management will be remanded for consideration on its merits when the appellant submits proof of service of his statement of reasons on the adverse party subsequent to dismissal of his appeal for failure to submit proof of such service.

Dr. A. J. Rehberger, A-29256 (July 18, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to serve copies of his appeal documents on the adverse party named in the decision appealed from in accordance with the Department's rules of practice.

Jetta A. Dougherty et al., A-29323 A-29403, A-29481, A-29602 (Sept. 18, 1962)

An appeal to the Secretary will be dismissed when the appellant does not transmit his statement of reasons for filing until after the expiration of the time allowed for filing and when he fails to serve a copy of the statement upon the adverse party.

Keith M. Clark, Robert B. Choate, Jr., et al., A-28901 (Sept. 25, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

An appeal to the Secretary of the Interior which is dismissed because of the appellant's failure to serve his statement of reasons upon the adverse party named in the decision appealed from will, upon submission of proof of service upon the adverse party as required by the rules of practice, be considered on the merits.

Ethel Severson, A-28957 (Supp.) (Sept. 28, 1962)

The dismissal of an appeal to the Director of the Bureau of Land Management because the appellant is unable to furnish proof of his service of his notice of appeal and statement of reasons on the adverse party named in the decision appealed from will be reversed when it is apparent that service was effected and that the adverse party refused to acknowledge such service.

Lyndell Williams, A-29414 (Oct. 10, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to serve his notice of appeal and statement of reasons upon the adverse party named in the decision appealed from.

Joseph Q. Clark, A-29581 (Oct. 11, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant is unable to prove that he served a copy of his statement of reasons for the appeal on the adverse party named in the decision appealed from; mailing of a copy of the statement to the adverse party at his address of record does not constitute service on him in the face of the adverse party's denial of receipt of the statement.

John H. Evans, Sr., et al., A-29586, A-29642 (Oct. 18, 1962)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to serve a copy of his statement of reasons upon the adverse party within the time required by the rules of practice.

United States v. William J. Gray and Columbia Titanium, Inc., A-29742 (Oct. 31, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a copy of the notice of appeal upon the adverse party named in the decision appealed from, the Regional Solicitor, within the time allowed by the Department's rules of practice.

United States v. Wm. F. and F. M. Keys, A-29594 (Nov. 20, 1962)

An appeal to the Director of the Bureau of Land Management is improperly dismissed on the ground that the appellant did not serve his combined notice of appeal and statement of reasons on the adverse party where it appears that the appellant sent a copy of the document by registered mail addressed to the adverse party, a county board, at the proper address but designated the manager of the land office as the manager of that body and that delivery was attempted at the address of the board but then withheld because the manager was not known there.

John E. Hicks, A-29663 (Dec. 5, 1962)

When an appeal to the Director, Bureau of Land Management, is dismissed for failure to serve the adverse party with a copy of the notice of appeal and statement of reasons and on appeal to the Secretary the appellant submits proof showing service on the adverse party within the time required, the decision dismissing the appeal will be reversed and the case remanded for consideration on its merits.

Goldie J. Bartel, A-29200 (Dec. 28, 1962)

Standing to Appeal

The Board has jurisdiction of appeals presented by a prime contractor in behalf of a subcontractor involving claims for additional costs of performance.

Appeal of Cheney-Cherf and Associates, IBCA-250 (June 19, 1962) 69 I.D. 102

An order by a hearing examiner denying a motion to dismiss a contest proceeding brought by the Government against mining claims filed with the answer to the charges brought against the claims is an interlocutory order which is not appealable prior to the rendering of a decision by the hearing examiner on the merits of the contest and an appeal from such an order will be dismissed as premature.

United States v. William A. McCall and Olaf H. Nelson, United States v. The Dredge Corporation, A-29161 (July 30, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons

An appeal to the Director of the Bureau of Land Management from the rejection of a small tract purchase application is improperly dismissed because of the appellant's failure to file a statement of reasons when the appeal indicates that the appellant concedes the untimely filing of his application to purchase, upon which the land office based its rejection of the application, but asks to be relieved of the consequences of such untimely filing because of ignorance of any obligation to file at an earlier time and because he made his arrangements to purchase through a private company.

Edward H. Neubauer, A-28808 (Jan. 30, 1962)

An appeal to the Secretary of the Interior from a decision of the Bureau of Land Management will be dismissed if it is not supported by a statement of reasons.

Warren L. Smith, A-29181 (Feb. 2, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons for the appeal.

C. E. Dautrich, A-28918 (Feb. 7, 1962)

Hyrum Wilford Priscott, A-28878 (Feb. 8, 1962)

Panther Mountain Corporation, A-28879 (Feb. 9, 1962)

John Harold Horn et al., A-28884 (Feb. 9, 1962)

Lauren W. Gibbs, R. J. Hollberg, Jr., Joseph Sherman, A-29690 (Oct. 4, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file any statement of reasons in support of his appeal.

Samuel G. Bialac, A-28960 (Feb. 23, 1962)

H. G. Jeffrey, A-29001 (Feb. 28, 1962)

Henry R. Lichtwald, A-29063 (Feb. 28, 1962)

Edward George Tokheim Hartford Z. Smith, A-29077 (Mar. 5, 1962)

H. B. Sprenger et al., A-29122 (Mar. 19, 1962)

Anna N. Weddle, Leonard N. Forshee, A-29253 (Apr. 16, 1962)

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

Nathan O. Berry, A-29247 (July 13, 1962)

James H. McMinn, A-29368 (Aug. 7, 1962)

Andrew W. Kern et al., A-28929 (Sept. 25, 1962)

James J. Thomas, A-29286 (Sept. 27, 1962)

State of New Mexico, A-29452 (Oct. 26, 1962)

William A. Dickson, Jr., A-29726 (Nov. 1, 1962)

Joycelyn M. Dilliner et al., A-29153 (Nov. 21, 1962)

Daniel F. Barry et al., A-29739 (Nov. 28, 1962)

Dennis Heitman, A-29727 (Nov. 28, 1962)

Lauren W. Gibbs, A-29780 (Dec. 20, 1962)

Thurman A. Hale, A-29782 (Dec. 20, 1962)

John J. Hartford, A-29831 (Dec. 20, 1962)

Edward R. Knapp, A-29824 (Dec. 20, 1962)

Roy Calvin Westmoreland, A-29795 (Dec. 25, 1962)
John D. Winters, A-29732 (Dec. 20, 1962)

Jean Marvin Powell, A-29778 (Dec. 26, 1962)

Where, after a notice of appeal to the Secretary is filed without giving reasons for the appeal, the appellant notifies the Secretary that it agrees with the decision appealed from and that it will not file a statement of reasons, the appeal will be dismissed.

State of Arizona, A-29189 (Feb. 9, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a statement of reasons for his appeal.

J. M. McFadden, A-28913 (Feb. 12, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a statement of reasons in support of the appeal.

Margaret Agnes Collins, A-28985 (Feb. 23, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file any statement of reasons in support of the appeal, or files a statement of reasons within the 10-day grace period permitted by the rules of practice but does not transmit it within the 30-day period required by the rules, or files a statement after the end of the grace period.

Edwin F. Parker et al., A-28992 (Feb. 28, 1962)

An appeal to the Director, Bureau of Land Management, will be dismissed for failure to show reasons for the appeal, if the appelant fails to point out in what respects the decision he appeals from is in error.

Webster K. Clark, A-28869 (Mar. 27, 1962)

An appeal is properly dismissed when the appellant fails to transmit a statement of reasons in support of his appeal within the period required by the Department's rules of practice although the statement is received within the 10-day grace period provided for in the rules.

Newville, Koenig & Associates, Inc., et al., A-28962 (Mar. 21, 1962)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to serve a copy of his notice of appeal on the adverse party and fails to file a statement of reasons in support of the appeal.

A. C. Caldwell, A-29177 (Apr. 12, 1962)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to file a statement of reasons for the appeal within the time allowed under the Department's rules of practice.

Geraldine G. Barone, A-28934 (Apr. 26, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A statement of reasons for an appeal which does no more than to charge that the decision appealed is contrary to the evidence submitted in support of the validity of a mining claim is not a sufficient specification of error to constitute the statement of reasons required by the rules of practice and the appeal is properly dismissed.

United States v. Iris M. Klingbiel, Fred W. Klingbiel, A-29135 (Apr. 26, 1962)

An appeal to the Secretary will be dismissed where the statement of reasons is mailed after the end of the 30-day period in which it is required to be filed.

Allan Stowe, A-29162 (Apr. 30, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant obtains an extension of time to file a statement of reasons and thereafter fails to file any statement of reasons in support of the appeal.

Caswell Silver, A-29184 (May 23, 1962)

A notice of appeal which does no more than to suggest that the decision appealed from is not in harmony with the law is not a sufficient specification of error to constitute the statement of reasons for an appeal required by the rules of practice and the appeal is properly dismissed when no subsequent statement of reasons is filed in support of the appeal.

K. Lewis Fields, A-29183 (May 25, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant who has obtained extensions of time to file his statement of reasons repudiates the statement filed in his behalf within the last extension granted and fails to file any other statement of reasons in his behalf.

Cecil Roy Webster, A-29226 (June 1, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Director, Bureau of Land Management, is properly dismissed when a request for an extension of time to file a statement of reasons in support of the appeal is not filed within the period allowed for filing the statement of reasons and a request for extension and statement of reasons are filed well after the period allowed.

John I. Kirby, A-29210 (June 29, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when a statement of reasons in support of the appeal is not filed within the period allowed for filing such statement and a request for an extension of time to file the statement is not filed until after the expiration of such period.

Fred C. Stewart, A-29209 (June 29, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to mail a statement of reasons in support of his appeal within the period allowed for filing the statement even though the statement is received in the office in which it is required to be filed within the 10-day period allowed by the grace rule.

Tom Clay Colley, A-29217 (July 2, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the statement of reasons for the appeal is not filed with the notice of appeal and is later filed in the land office instead of the office of the Director within the period allowed for filing and is subsequently forwarded to the office of the Director after the expiration of such period.

Mr. and Mrs. William Alenius, A-29222 (July 9, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail his statement of reasons for the appeal until after the expiration of the period within which it was required to be filed even though it was received within the 10-day period of grace stipulated in 43 CFR 221.92(b).

Allen Loeschen et al., A-28700 (July 11,1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Secretary of the Interior will be dismissed where the appellant fails to transmit a statement of reasons in support of the appeal within the time allowed for filing.

Joe C. Olguin, A-29230 (July 12, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file any statement of reasons in support of his appeal.

Grace E. Hutchins et al., A-29297, A-29416, A-29625 (July 30, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of the appeal with the notice of appeal or at any time after filing the notice of appeal as required by the Department's rules of practice.

Alpine Estates, Inc., A-29064 (Aug. 7, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of his appeal as required by the Department's rules of practice.

H. E. Baumberger, A-29587 (Aug. 8, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of it as required by the Department's rules of practice.

Louis L. Knapp, A-29488 (Aug. 8, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of the appeal as required by the Department's rules of practice.

City of Rialto, A-29503 (Aug. 8, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of the appeal and does not request an extension of time to do so until after the period for filing a statement of reasons has expired.

Hilda M. Warrick et al., A-29359 (Aug. 15, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of the appeal within the time allowed for filing such statement.

E. Wayne Brown, A-29299 (Aug. 17, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a statement of reasons in support of his appeal.

Cecil R. Webster et al., A-29258, A-29261 (Aug. 17, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant mails a statement of reasons in support of the appeal more than 30 days after filing the notice of appeal.

George F. Kalmbach, A-29062 (Aug. 30, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a statement of reasons in support of his appeal as required by the Department's rules of practice.

Margaret L. Justheim et al., A-29445 (Sept. 14, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant files a statement of reasons within the 10-day grace period allowed by the Department's rules of practice but fails to transmit the statement to the Director's office within the 30-day period allowed for filing the statement. Mailing of the statement to or filing the statement in the land office is not transmission to the Director.

Bette Amen Elwell et al., A-29353, A-29395, A-29477, A-29608, A-29623 (Sept. 18, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

Where, in support of his appeal, an appellant states a reason for the appeal which might be supposed to provide a basis for changing the decision from which the appeal was taken, he has met the requirements of the rules of practice for stating reasons for his appeal.

Ernest F. Brackmier, A-28911 (Sept. 20, 1962)

An appeal to the Secretary will be dismissed when the appellant does not transmit his statement of reasons for filing until after the expiration of the time allowed for filing and when he fails to serve a copy of the statement upon the adverse party.

Keith M. Clark, Robert B. Choate, Jr., et al., A-28901 (Sept. 25, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the statement of reasons for the appeal is not filed with the notice of appeal and is later filed in the land office and forwarded to the director and filed in the office of the Director after the end of the 30-day period allowed by the rules of practice for the filing of a statement of reasons that is not filed with the notice of appeal.

The rules of practice allowed only 30 days after the filing of a notice of appeal for filing a statement of reasons if the statement is not included with the notice of appeal; there is nothing which suggests that an appellant has 60 days from service of the decision appealed from without regard to the time when the notice of appeal is filed

William MacDonald, A-29713 (Oct. 8, 1962)

An appeal to the Secretary of the Interior is dismissed when the appellant fails to file any statement of reasons within the time required or subsequently.

Joseph A. Kuchta, A-29635 (Oct. 8, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A statement included in a notice of appeal from a decision rejecting final proof on a desert land entry for failure to comply with the requirements of the desert land law within the statutory life of the entry, as extended, that full compliance would soon be accomplished and an adequate explanation for the delay furnished is a sufficient indication of the reasons for an appeal to meet the requirement of the Department's rules of practice, and the appeal should not be dismissed because a subsequent statement of reasons was filed too late.

Lillian L. Underwood, A-29438 (Oct. 10, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to point out reasons why he thinks the decision appealed from is erroneous.

Everett W. Heath, A-29615 (Oct. 30, 1962)

An appeal to the Secretary will be dismissed where the appellant transmits his statement of reasons after the end of the 30-day period in which it was required to be filed.

Harry R. Boys, A-29715 (Oct. 31, 1962)

Where an appeal to the Director, Bureau of Land Management, is dismissed on the ground that the appellant failed to file a statement of reasons in support of his appeal, and on his appeal to the Secretary the appellant submits persuasive evidence that he had filed a statement of reasons within the time required, the dismissal will be reversed and the case returned for consideration on the merits.

Wayne Cole, A-29617 (Oct. 31, 1962)

An appeal to the Director of the Bureau of Land Management is improperly dismissed on the ground that the appellant failed to include in his appeal material which points out specific reasons why the decision appealed from is erroneous when the appellant submitted with his appeal an engineering report controverting the facts upon which the land office decision relied; this is so even though the report may have been submitted to the land office prior to its decision.

Iris Catherine Chester et al., A-29567 (Nov. 14, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

Appeals to the Director of the Bureau of Land Management are properly dismissed when the appellants file statements of reasons within the 10-day grace period allowed by the Department's rules of practice but fail to transmit the statements to the Director's office within the period allowed for filing the statements.

Charlotte T. Armstrong et al., A-29757 (Nov. 15, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file with the Secretary of the Interior a statement of reasons in support of his appeal within the time allowed by the Department's rules of practice.

Edward K. Rudolph, A-29496 (Nov. 20, 1962)

When no statement of reasons for an appeal to the Secretary of the Interior is filed, the appeal will be dismissed.

Howard Leatherman, D/B/A Coos County Sheep Company, A-29750 (Dec. 13, 1962)

Timely Filing

An appeal to the Secretary will be dismissed where the appellant does not transmit the required filing fee within the period of time in which it is required to be paid although the filing fee is received within 10 days after the end of that period.

C. Bland Jamison, A-29126 (Feb. 19, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file any statement of reasons in support of the appeal, or files a statement of reasons within the 10-day grace period permitted by the rules of practice but does not transmit it within the 30-day period required by the rules, or files a statement after the end of the grace period.

Edwin F. Parker et al., A-28992 (Feb. 28, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Secretary must be dismissed when the notice of appeal is transmitted after the end of the 30-day period in which it was required to be filed.

Melvin Church, Jack M. Gardner, A-29084 (Mar. 5, 1962)

An appeal to the Secretary will be dismissed where the notice of appeal is mailed five days after the end of the 30-day period in which it is required to be filed.

Emil Clayton Koontz, A-29017 (Mar. 21, 1962)

An appeal is properly dismissed when the appellant fails to transmit a statement of reasons in support of his appeal within the period required by the Department's rules of practice although the statement is received within the 10-day grace period provided for in the rules.

Newville, Koenig & Associates, Inc., et al., A 28962 (Mar. 21, 1962)

An appeal to the Secretary will be dismissed where the statement of reasons is mailed after the end of the 30-day period in which it is required to be filed.

Allan Stowe, A-29162 (Apr. 30, 1962)

An appeal to the Secretary of the Interior will be dismissed where the appellant fails to mail his notice of appeal within the 30-day period allowed for filing of the appeal.

Mary J. Escudero et al., A-28807 (May 17, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the statement of reasons is not sent to the Director's office within 30 days after the notice of appeal is filed.

William F. Peron, A-29182 (May 21, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Secretary of the Interior will be dismissed when the notice of appeal is deposited with a hearing examiner during the period in which it was required to be filed in the office of the Director but is not forwarded to the Director's office until after the end of the period, even though it was received in the Director's office within the period allowed by the grace provision of the rules of practice since the deposit of the document with the hearing examiner cannot be regarded as a transmission of the document to the Director.

United States v. Jack Brinkhoff and Polly Brinkhoff, A-29145 (May 21, 1962)

An appeal to the Secretary will be dismissed when the appellant fails to transmit the filing fee for the appeal within the 30-day period allowed for filing the notice of appeal.

Milton H. Lichtenwalner et al., A-28825 et al., (May 31, 1962) 69 I.D. 71

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to mail a statement of reasons in support of his appeal within the period allowed for filing the statement even though the statement is received in the office in which it is required to be filed within the 10-day period allowed by the grace rule.

Tom Clay Colley, A-29217 (July 2, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the statement of reasons for the appeal is not filed with the notice of appeal and is later filed in the land office instead of the office of the Director within the period allowed for filing and is subsequently forwarded to the office of the Director after the expiration of such period.

Mr. and Mrs. William Alenius, A-29222 (July 9, 1962)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail his statement of reasons for the appeal until after the expiration of the period within which it was required to be filed even though it was received within the 10-day period of grace stipulated in 43 CFR 221.92(b).

Allen Loeschen et al., A-28700 (July 11, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Secretary of the Interior will be dismissed where the appellant fails to transmit a statement of reasons in support of the appeal within the time allowed for filing.

Joe C. Olguin, A-29230 (July 12, 1962)

An appeal to the Secretary of the Interior will be dismissed when the notice of appeal is not transmitted to the proper office for filing within the period allowed for appeal.

Martha L. Chudacoff et al., A-29374, A-29442 (Sept. 18, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant files a statement of reasons within the 10-day grace period allowed by the Department's rules of practice but fails to transmit the statement to the Director's office within the 30-day period allowed for filing the statement. Mailing of the statement to or filing the statement in the land office is not transmission to the Director.

Bette Amen Elwell et al., A-29353, A-29395, A-29477, A-29608, A-29623 (Sept. 18, 1962)

Appeals to the Secretary will be dismissed where the appellants mail the filing fees after the end of the 30-day period in which they are required to be paid, even though they are received within the 10-day grace period thereafter.

Andrew W. Kern et al., A-28929 (Sept. 25, 1962)

An appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management will be dismissed when the notice of appeal was mailed after the 30-day period allowed by the Department's rules of practice for filing the notice of appeal.

Virgie Lee et al., A-29657 (Sept. 28, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Director of the Bureau of Land Management is properly dismissed when the statement of reasons for the appeal is not filed with the notice of appeal and is later filed in the land office and forwarded to the Director and filed in the office of the Director after the end of the 30-day period allowed by the rules of practice for the filing of a statement of reasons that is not filed with the notice of appeal.

The rules of practice allow only 30 days after the filing of a notice of appeal for filing a statement of reasons if the statement is not included with the notice of appeal; there is nothing which suggests that an appellant has 60 days from service of the decision appealed from without regard to the time when the notice of appeal is filed.

William MacDonald, A-29713 (Oct. 8, 1962)

A notice of appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management which is mailed after the expiration of the 30-day period following service upon the appellant of the decision appealed from will not permit waiver of the rule for timely filing even though the notice is received within the 10-day period allowed by the grace rule and the appeal will be dismissed.

Mrs. Liddy Marcus, Widow of Max Marcus, Deceased, A-29675 (Oct. 8, 1962)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the filing fee is not sent to the land office which issued the decision appealed from but instead is sent to and received in the office of the Director within the period allowed for filing the notice of appeal but is forwarded to the land office after the expiration of such period and is received in the land office within the period allowed by the grace provision of the rules of practice since the deposit of the filing fee in the Director's office cannot be construed as a transmission of the fee to the land office.

Mrs. Wayland Phillips, A-29711 (Oct. 8, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Director of the Bureau of Land Management is properly dismissed when the notice of appeal is filed in the office of the Director and is not transmitted to the land office for filing within the period allowed for filing even though it is actually filed in the land office within 10 days after the expiration of the period allowed for filing.

Thomas Pirtle, A-29380 (Oct. 8, 1962)

An appeal to the Director, Bureau of Land Management, is properly dismissed when the statement of reasons for the appeal is not transmitted to the Director within the 30-day period in which it is required to be filed.

Eleanor E. Mitchell, A-29801 (Oct. 31, 1962)

An appeal to the Secretary must be dismissed where the appellant files his notice of appeal in the land office after expiration of the 30-day period allowed for filing the notice of appeal in the office of the Director.

Claude M. Murphy, Lenore E. Murphy, A-29789 (Oct. 31, 1962)

When a notice of appeal to the Secretary of the Interior from a decision of the Bureau of Land Management is not transmitted within the 30-day appeal period but is received during the 10-day grace period, the appeal must be dismissed.

Rose Tarahonich, A-29774 (Dec. 13, 1962)

An appeal to the Secretary must be dismissed where the notice of appeal is transmitted after the end of the 30-day period in which it is required to be filed.

United States v. C. B. Bryant, A-29188 (Dec. 17, 1962)

An appeal to the Secretary cannot be considered and must be dismissed where the notice of appeal is transmitted after the end of the 30-day period in which it is required to be filed.

Royce C. Dukes, A-29866 (Dec. 26, 1962)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant files his statement of reasons in the land office after the 30-day period allowed for filing although the statement is thereafter transmitted by the land office to the Director and is received within the 10-day grace period provided by the rules of practice.

Henry Dollarhide, A-29863 (Dec. 27, 1962)

An appeal to the Secretary cannot be considered and must be dismissed where the notice of appeal is transmitted after the end of the 30-day period in which it is required to be filed.

Orchard Mesa Airport, Inc., A-29843 (Dec. 27, 1962)

EVIDENCE

Mere allegations made by appellant are insufficient to overcome findings made by the contracting officer. No error having been shown in the decision of the contracting officer, it must stand.

Appeal of Refer Construction Company, IBCA-267 (Feb. 28, 1962)

The Board in its discretion will permit the introduction of newly discovered evidence which was not available to the contractor at the time of the original oral hearing of an appeal from the contracting officer's decision.

Appeal of Fred E. Hicks Construction Company, IBCA-271 (May 11, 1962)

Where a document on its face indicates the granting of an extension of time for performance of the contract, a contrary interpretation by the Government will be disregarded by the Board. Even if the document is found to be ambiguous, the doctrine of contra proferentem would apply.

Appeal of Brooks and Mixon, IBCA-277 (Aug. 14, 1962) 69 I. D. 119

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Where the contractor fails to sustain its burden of proof, the findings and decisions of the contracting officer must be accepted and will stand unless it is manifest on the very face of the record that they are erroneous.

Appeal of John Martin Company, Inc., IBCA-316 (Sept. 21, 1962)

Proof of a delay by the Government does not per se give a contractor a right to an extension of time in the absence of evidence that the Government's delay caused a delay in the contractor's performance.

Where an official report of the Weather Bureau states that new low temperature records were established for the month in which there was delay in performance of the contract because of allegedly cold weather, such evidence will be accepted by the Board as meeting the criteria for establishing a claim of unusually severe weather as an unforeseeable cause of delay.

Appeal of Allied Contractors, Inc., IBCA-265 (Sept. 26, 1962) 69 I.D. 147

Where a junior oil and gas lease offeror appeals from the rejection of his offer because of the award of a lease to a senior offeror on the ground that the senior offer was filed after his offer, the rejection will be affirmed where he furnishes no evidence in support of his allegation; it is not incumbent upon the Department to prove to him that the senior offer was filed prior to his offer.

Floyd Blaine, A-29097 (Oct. 16, 1962)

GOVERNMENT CONTESTS

Mining claims are properly declared null and void where the contestee fails to file an answer denying the charges of invalidity contained in the contest complaint served upon him.

United States v. Henry Gilligan et al., A-28857 (Feb. 19, 1962)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

A mining claim is properly declared null and void when a contest against the validity thereof is initiated and the contestees, although filing a motion to dismiss the complaint, fail to file an answer specifically meeting and responding to the allegations of the complaint within the period prescribed by the governing regulations. The allegations of the complaint will, in such instance, be taken as admitted.

United States v. Gifford Allen et al., A-28718 (July 26, 1962)

Where contestees fail to timely answer contest charges brought by the United States against the validity of a mining claim, the charges will be taken as admitted by the contestees and the claims declared null and void.

United States v. Ruben J. Garcia, et al., A-28889 (July 30, 1962)

An order by a hearing examiner denying a motion to dismiss a contest proceeding brought by the Government against mining claims filed with the answer to the charges brought against the claims is an interlocutory order which is not appealable prior to the rendering of a decision by the hearing examiner on the merits of the contest and an appeal from such an order will be dismissed as premature.

United States v. William A. McCall and Olaf H. Nelson, United States v. The Dredge Corporation, A-29161 (July 30, 1962)

Where a complaint in a Government contest is served upon one who has been represented as being the attorney for the contestee, the contest is properly decided by default against the contestee where an answer to the complaint is filed more than 30 days after service of the complaint upon the attorney.

United States v. Carl D. Jensen, A-28789 (Aug. 6, 1962)

RULES OF PRACTICE--Continued

HEARINGS

Where an applicant for an Indian allotment of public domain asserts that he settled on the land applied for long before it was withdrawn, that he lived on the land for years before he moved elsewhere, and that he has continued to maintain a home on the land and to use it for grazing, but an investigation conducted by the Bureau reached contrary conclusions, the conflict is best resolved by holding a hearing to determine whether the applicant settled on the land and when and what his relationship to the land has been.

John David Smith et al., A-28829 (Sept. 17, 1962)

WITNESSES

The purpose of the holding of conferences pursuant to 43 CFR 4.9 is the simplification and sharpening of issues; the possibility of obtaining stipulations, admissions of facts, and the introduction of documents; the determination of the number of witnesses and the limitation of expert witnesses, if any; and the discussion and consideration of such other matters as may aid in the disposition of appeals.

Appeal of Ray D. Bolander Company, Inc., IBCA-331 (Dec. 14, 1962) 69 I.D. 223

SALINE WATER PROGRAM

Section 4b of the Saline Water Conversion Act of September 22, 1961 (75 Stat. 628, 42 U.S.C. 1954b) requires that patents on inventions resulting from Government-financed research and development work under the Act be available to the general public without royalty or other restriction.

Section 4b of the Saline Water Conversion Act of September 22, 1961 (75 Stat. 628, 42 U.S.C. 1954b) requires the Secretary to take steps to assure that background patents essential to the practice of patents or the use of processes resulting from research and development contracts issued under the Act

SALINE WATER PROGRAM--Continued

be available to the general public on reasonable terms.

Patent Requirements of the Coal Research Act, Saline Water Conversion Act and Helium Act, M-36637 (May 7, 1962) 69 I.D. 54

SCRIP

GENERALLY

One will not be permitted to select a 40-acre tract upon the basis of a selection right under the act of July 1, 1898, for 24.62 acres and payment of $1.25 per acre for the remainder under the rule of approximation.

Ferris F. Boothe, A-28854 (Aug. 16, 1962)

Where a withdrawal of land is revoked but the order of revocation provides that the land shall be subject only to small tract application upon issuance of an order of classification and such an order is issued, an application for a forest lieu selection of the land is properly rejected.

Donald J. Hodge et al., A-29045 (Oct. 22, 1962)

RECORDATION

The Department is required to refuse to record scrip offered for recording more than three years after the end of the period specified by the statute which required recording; erroneous information by a land office as to the necessity for recording or an erroneous refusal by the land office to accept scrip for recording, which is not appealed from, will not permit acceptance of the scrip for recording after the statutory period for filing has expired.

M. B. Waldron, A-28703 (Jan. 31, 1962)

SCRIP--Continued

SPECIAL TYPES OF SCRIP

A Valentine scrip application is properly rejected when disposal of the land applied for through a private exchange will aid in the assembly of recreational and public use sites.

Keith M. Clark, Robert B. Choate, Jr., et al., A-28901 (Sept. 25, 1962)

SECRETARY OF THE INTERIOR

Where no action was taken on an application to amend a coal permit for Alaskan land prior to the repeal of the act of October 20, 1914, by the act of September 9, 1959, the application must thereafter be rejected because of the cessation of authority in the Secretary to act under the 1914 act.

H. A. Faroe, A-28836 (Sept. 17, 1962)

SMALL TRACT ACT

GENERALLY

A desire to obtain a small tract of land upon which the applicant desires to construct a home and store mining equipment is not a satisfactory showing under the Small Tract Act, as amended, to qualify an applicant for acquisition of a second small tract through either purchase or lease.

John C. Linsey, A-28683 (Apr. 12, 1962)

APPLICATIONS

Those who submit appeals that are deficient in a vital element that is required by the rules

SMALL TRACT ACT--Continued

APPLICATIONS--Continued

of practice enjoy no more rights than if they had failed to appeal; consequently, when small tract applicants fail to furnish proof of service of copies of their notices of appeal upon an adverse party named in a land office decision appealed from, which rejected the small tract applications, the appeals are properly dismissed and the applications considered invalid, despite a subsequent reversal of the land office decision and a reclassification of the land applied for as suitable for small tract purposes.

Leonard C. Brose et al., A-28650 (May 17, 1962)

A small tract application for land previously included in a relinquished small tract lease is properly rejected in the absence of an order specifying the time and manner in which the tract shall be made available for lease or purchase.

Vernon F. Miller, A-29016 (Aug. 6, 1962)

A small tract application is properly rejected upon a determination that the land should be disposed of under a prior state exchange application; the small tract applicant can gain no right to the land because he may have been misinformed by an employee of the Bureau of Land Management that the land was not subject to any prior commitment at the time when he filed his application.

Dr. John R. Herring, A-28905 (Sept. 4, 1962)

The filing of an application to purchase a small tract of public land does not create in the applicant any right or interest in the land covered by the application so that even though he has consented to purchase the tract with a reservation of a right-of-way he may be required, prior to acceptance of his application, to consent to an enlarged reservation.

James Amos Nelson, A-28838 (Sept. 17, 1962)

SMALL TRACT ACT--Continued

APPLICATIONS--Continued

An applicant for lease of a small tract of public land can gain no right to a lease of any specific tract of land in reliance on the assurance of a land office employee that the land will be subdivided so that he can lease a tract having the precise boundaries of the tract which he desires because information, opinions or promises given by the land office cannot operate to vest in an applicant for public land any right not authorized by law or the applicable regulation.

Ralph J. Cahill et al., A-28777 (Sept. 20, 1962)

The filing of an application for a small tract of public land vests in the applicant no right or interest in the land and he must, therefore, accept the allowance of his application for a tract of such acreage as the classification of the land fixes as proper and he must pay a purchase price which reflects a current appraisal of the fair market value of the land.

Charles Leonard Short, A-28994 (Sept. 21, 1962)

An applicant for purchase of a small tract of public land acquires no right or interest in the land by the filing of his application and must, therefore, accept the allowance of his application for a tract of such acreage as classification has determined to be proper and pay a purchase price which reflects a current appraisal of the fair market value of the land.

Herbert O. Bogorad, Lionel W. Olsen, A-28988 (Sept. 25, 1962)

CLASSIFICATION

An application filed under the Small Tract Act is properly rejected when a field examination determines that water for domestic use is unavailable at a reasonable economic cost and the land is otherwise unsuitable for smal' tract uses and no convincing evidence is produced that an adverse classification is erroneous.

Mrs. George H. Franklin, A-28517 (Feb. 7, 1962)

Small tract applications for land which is subject to flash floods or is part of legal subdivisions the major portions of which are subject to flooding are properly rejected.

Mary J. Escudero et al., A-28807 (May 17, 1962)

SMALL TRACT ACT--Continued

CLASSIFICATION--Continued

Small tract applications are properly rejected where the land applied for should be retained in public ownership for recreation and multiple-use management.

Allen Loeschen et al., A-28700 (July 11, 1962)

State selections in satisfaction of a legislative grant of public land are preferred over conflicting private applications filed at about the same time or subsequently; therefore it is proper to reject small tract applications filed for land in a State selection where there is no showing that allowing the State selection would be less in the public interest.

Olaf H. Iverson, Sherman E. Tucker, A-28810 (July 12, 1962)

It is proper to refuse to classify as suitable for disposal under the Small Tract Act public land that is needed for a timber management program and is also valuable for game and public recreational purposes and as a means of access to other public land valuable for public recreation.

Clarence J. Heidbreder, A-28841 (July 26, 1962)

Land containing trees and a spring and constituting an oasis in a barren area should be retained in public ownership and not classified for disposal under the Small Tract Act.

Frank Rauzi et al., A-28602 (Aug. 15, 1962)

Applications for small tracts are properly rejected when the land is in the vicinity of community cattle-shipping facilities and needed for a holding pasture in the immediate vicinity of the shipping facilities.

George R. Miller, et al., A-28826 (Sept. 21, 1962)

The filing of an application for a small tract of public land vests in the applicant no right or interest in the land and he must, therefore, accept the allowance of his application for a tract of such acreage as the classification of the land fixes as proper and he must pay a purchase price which reflects a current appraisal of the fair market value of the land.

Charles Leonard Short, A-28994 (Sept. 21, 1962)

SMALL TRACT ACT--Continued

CLASSIFICATION--Continued

An applicant for purchase of a small tract of public land acquires no right or interest in the land by the filing of his application and must, therefore, accept the allowance of his application for a tract of such acreage as classification has determined to be proper and pay a purchase price which reflects a current appraisal of the fair market value of the land.

Herbert O. Bogorad, Lionel W. Olsen, A-28988 (Sept. 25, 1962)

A small tract application for public land which is classified as suitable for State selection in response to a selection application filed earlier than the small tract application is properly rejected where there is no indication that the classification was in error.

Wilbur H. Stodieck, A-29603 (Dec. 10, 1962)

A small tract classification is properly refused for land that is covered with mining claims, is included in a State exchange application, and comprises steep, rough, and rocky terrain which create difficult subdivision and engineering problems.

Donald L. Williams et al., A-29033 (Dec. 13, 1962)

LANDS SUBJECT TO

Public land that is withdrawn from settlement, location, sale and entry and reserved for classification is not available for lease or sale under the Small Tract Act and an application filed under that act is properly rejected.

Cleora B. Ray, A-28805 (July 30, 1962)

Land containing a spring which furnishes enough water for general use for watering purposes, although probably not of vital significance for stock watering, is properly determined to be withdrawn by the Executive Order of April 17, 1926, as a public water reserve and to be therefore unavailable for disposal under the Small Tract Act.

Frank Rauzi et al., A-28602 (Aug. 15, 1962)

SMALL TRACT ACT--Continued

SALES

An application to purchase a small tract is properly rejected when the application is filed in the land office after the option to purchase has expired in accordance with its own terms.

Frank Berta et al., A-28865 (Apr. 27, 1962)

An application to purchase a small tract is properly rejected when the application and purchase price a received in the land office after the option has e pired in accordance with its own terms.

Sue Thompson and Hank Penny, A-28804 (May 18, 1962)

A small tract lessee is not entitled tc purchase the leased land when he has failed to meet the improvement standards upon which his option to purchase depended.

Carl C. Kirk, A-28822 (June 22, 1962)

A departmental regulation provides that lands may be classified for direct sale under the Small Tract Act at not less than their appraised price and where applications are filed to purchase small tracts at amounts based on land appraisals made a number of years before the applications were filed, the applicants may be required to pay such additional amounts as are necessary to equal the value of the land as determined by a recent appraisal even though the lower prices submitted with the applications were supplied to the applicants in land office decisions.

The filing of an application to purchase a small tract which has been offered directly for sale without lease along with the payment of purchase money is not a completed contract in the absence of acceptance by the Government.

Kenneth W. Swallow et al., A-28975, A-28976 (Aug. 6, 1962)

An appraisal of public land which takes into account that during periods of high water much of the land would be under water and on the basis of its swampy character, poor access and lesser desirability than other lake-front property assigns a value considerably below the recognized value of other lake-front property is acceptable to the Department as the basis for a proposed sale even though a real estate dealer is found who swears that the value is less.

William Mills Otter, A-28780 (Aug. 15, 1962)

SMALL TRACT ACT--Continued

SALES--Continued

The filing of an application for a small tract of public land vests in the applicant no right or interest in the land and he must, therefore, accept the allowance of his application for a tract of such acreage as the classification of the land fixes as proper and he must pay a purchase price which reflects a current appraisal of the fair market value of the land.

Charles Leonard Short, A-28994 (Sept. 21, 1962)

An applicant for purchase of a small tract of public land acquires no right or interest in the land by the filing of his application and must, therefore, accept the allowance of his application for a tract of such acreage as classification has determined to be proper and pay a purchase price which reflects a current appraisal of the fair market value of the land.

Herbert O. Bogorad, Lionel W. Olsen, A-28988 (Sept. 25, 1962)

Where a small tract lessee appeals from a decision offering him an opportunity to purchase without making the required improvements on the grounds that the appraisal price was either determined as of the wrong date or is excessive, and he has no contractual or statutory right to purchase the land, the land can be sold under the Department's conservation policy only at a price which reflects the current full market value.

Henry Offe, A-29060 (Dec. 10, 1962)

STATE EXCHANGES

GENERALLY

A State applying for an exchange of land under section 8 of the Taylor Grazing Act is entitled to allowance of its application as soon as it has complied with all of the requirements of the statute and departmental regulations in the absence of a prior reservation for a public purpose or the initiation of private rights in the land applied for.

Donald L. Williams et al., A-29033 (Dec. 13, 1962)

STATE SELECTIONS

State selections in satisfaction of a legislative grant of public land are preferred over conflicting private applications filed at about the same time or subsequently; therefore it is proper to reject small tract applications filed for land in a State selection where there is no showing that allowing the State selection would be less in the public interest.

Olaf H. Iverson, Sherman E. Tucker, A-28810 (July 12, 1962)

An application to select land under the community purposes grant of subsection 6(a) of the Alaska Statehood Act is properly rejected for failure to include a minimum of 5,760 acres in the selection, subject to the opportunity afforded to the State to show that the selected land is isolated from other tracts open to selection.

State of Alaska, A-29314 (Oct. 30, 1962) 69 I.D. 190

STATUTORY CONSTRUCTION

GENERALLY

An oil and gas lessee is properly required to consent to the amendment of her oil and gas lease to conform to the requirements of the Mineral Leasing Act Revision of 1960 which was adopted on the same day that the lease was issued where there is no record as to the time of the day on which the President signed the act; consequently the presumption applies that the act became effective from the first minute of the day and prior to acceptance of the lease offer.

Bette M. Snyder, A-29046 (Oct. 22, 1962)

IMPLIED REPEALS

While the law generally does not favor repeals by implication, the amendment of an act by the substitution of language which omits the

STATUTORY CONSTRUCTION--Continued

IMPLIED REPEALS--Continued

words of a previous intermediate amendment constitutes a repeal of that intermediate amendment, in the absence of indications of a contrary Congressional intent.

Leasing of Crow Indian Lands, M-36644 (November 29, 1962) 69 I. D. 203

SURFACE RESOURCES ACT

GENERALLY

To satisfy the requirement for a discovery on a mining claim located for scoria which will free that claim from the restrictions of section 4 of the act of July 23, 1955, it must be shown that the exposed materials appearing within the limits of the claim could have been extracted, removed and marketed at a profit before the adoption of the act.

United States v. Elmer J. Gustafson, A-28665 (Jan. 30, 1962)

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claim it must be shown that there has been a valid discovery within the meaning of the mining laws made within the limits of his claim to prevent the claim from being subjected to the terms and limitations of section 4 of that act.

A Government mineral examiner investigating a mining claim prior to a proceeding under the act of July 23, 1955, has no duty to test a claim for discovery beyond examining the discovery points made available by the mining claimant.

United States v. Spar Mining Company et al., A-28786 (July 30, 1962)

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of a mining claim, a valid discovery must be shown within the limits of the claim by the same evidence which establishes the validity of a mining claim under the mining laws in order to prevent subjection of the claim to the limitations and restrictions of section 4 of the act.

United States v. Sam Thompson et al., A-28727 (Aug. 1, 1962)

Personal service of a notice to miners that a statement asserting rights to the surface of their claims must be filed under the act of July 23, 1955, is not required where the department or agency requesting publication of the notice has complied with the terms of section 5(a) of the act.

Libby Gold Corporation, A-28800 (Aug. 15, 1962)

To establish the validity of a mining claim which, in 1954, was located on account of deposits of a common variety of building stone, the mining claimant must show that on or before July 23, 1955, the stone was marketable at a profit, and if the validity of such a claim is not so established, the claim is subject to the limitations of section 4 of the act of July 23, 1955, restricting the use of vegetative and other surface resources on the land covered by the claim.

United States v. Donald J. Morgan, A-28702 (Aug. 21, 1962)

Where the date on which a mining claim was located as shown by a verified statement filed under the act of July 23, 1955, is a date when the land was within a first form reclamation withdrawal and so withdrawn from mining location, and after the verified statement is filed, evidence is submitted by the mining claimants tending to show that the claim was first located on a date when the land was open to mining entry, the Department will not declare the claim null and void for having been located on land withdrawn

SURFACE RESOURCES ACT--Continued

GENERALLY--Continued

from mineral entry without a hearing on the question of the date on which the claim was located.

Mr. and Mrs. Ted R. Wagner, A-28989 (Oct. 30, 1962) 69 I. D. 186

In a proceeding under subsection 5(c) of the act of July 23, 1955, to determine the rights of a mining claimant to the surface resources of his mining claim, a finding that the claim is subject to the limitations and restrictions of section 4 of that act is proper when there is no evidence that a discovery of a valuable mineral deposit has been made on the claim.

United States v. Joseph Knox et al., A-29059 (Oct. 31, 1962)

APPLICABILITY

Where it is shown in a proceeding conducted pursuant to section 5 of the Surface Resources Act that discovery has not been made on unpatented mining claims located prior to July 23, 1955, the claims may not be used, prior to the issuance of patents therefor, for other than mining purposes and the claims are subject to the limitations and restrictions imposed by section 4 of that act.

United States v. Kathryne Cragholm, United States v. Ralph Martin, A-28690 (Jan. 30, 1962)

HEARINGS

A mining claimant who fails to appear at a hearing set to inquire into the validity of his claim and offers no evidence in support of the validity of the claim is not entitled to further consideration on the plea that the United States did not show at the hearing the absence of a discovery of all possible minerals in the claim.

United States v. Frank J. Clement and O. N. England, A-28920 (Sept. 11, 1962)

SURFACE RESOURCES ACT--Continued

VERIFIED STATEMENT

A verified statement required under the act of July 23, 1955, is properly rejected and the use of the surface resources denied to a mining claimant who files such statement after the termination of the period of 150 days prescribed by the statute for such filing.

Libby Gold Corporation, A-28800 (Aug. 15, 1962)

The requirement of section 5 of the act of July 23, 1955, that a copy of a published notice be personally delivered or mailed by registered mail to certain mining claimants is satisfied by mailing the notice by registered mail to the proper address and it is immaterial that the addressee may not have personally received the notice from the person who signed for it.

James W. Harmon, A-28983 (Sept. 20, 1962)

Where, within the 150 days required by the act of July 23, 1955, a verified statement was timely filed setting forth the information required by the act in connection with determining rights to surface resources on unpatented mining claims, the determination as to whether an allegedly mistaken reply on the verified statement may be corrected after the 150-day period has elapsed is a matter of administrative discretion.

Mr. and Mrs. Ted R. Wagner, A-28989 (Oct. 30, 1962) 69 I. D. 186

SURVEYS OF PUBLIC LANDS

GENERALLY

Although the Secretary of the Interior may correct the public land surveys, once a plat of survey is accepted, it is presumed to be correct and will not be disturbed except upon clear proof of fraud or gross error.

Ralph E. May, C. S. McGhee, A-29014 (Jan. 30, 1962)

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

The suspension of a plat of survey renders the land affected thereby unsurveyed land.

Donna M. Ker et al., A-28979, A-28980 (Aug. 17, 1962)

AUTHORITY TO MAKE

When the Secretary of the Interior determines that lands have been erroneously omitted from the public land survey, he may survey them and dispose of them under the public land laws.

Ralph E. May, C. S. McGhee, A-29014 (Jan. 30, 1962)

DEPENDENT RESURVEYS

The method by which a lost township corner shall be reestablished depends upon the circumstances of the individual case, and if there is evidence that the corner had been at a certain latitude, proportionate measurement along the north-south township line will not be resorted to, even though, the longitudinal position of the same corner being unknown, proprotionate measurement has been employed along the east-west township line.

Lawrence H. Newton, A-28663 (Mar. 19, 1962)

A point of survey the position of which cannot be determined beyond reasonable doubt from traces of the original marks can and will be established from acceptable evidence bearing upon the original position, but in the absence of such evidence the location can be restored only by reference to one or more interdependent corners.

A succession of statements which is inconsistent and inconclusive with respect to the finding of a bearing tree or trees which determined the location of a quarter section corner is not acceptable evidence which will permit the relocation of a corner; reliance upon a location assumed from unacceptable evidence of the location of a quarter section corner cannot protect the one who relies from the consequences of trespass.

Vern Johnston Logging Company, A-28760 (Aug. 8, 1962)

SWAMPLANDS

Where a State swampland selection conflicts with a prima facie valid oil and gas lease, the swampland application will not be allowed until the State has established the swamp character of the land either in a contest brought against the oil and gas lease or at a hearing ordered by the Department at which the State will have the burden of proof.

Thomas Connell, A-29036 (Oct. 16, 1962)

TAYLOR GRAZING ACT

CLASSIFICATION

The authority conferred upon the Secretary of the Interior by section 7 of the Taylor Grazing Act to classify public land as proper for disposition imposes upon him the responsibility of determining whether the public interest would be served by classifying certain land as suitable for disposition in satisfaction of a lieu right of selection.

Linn Land Company, A-28765 (July 12, 1962)

TIMBER SALES AND DISPOSALS

The United States has paramount title to unpatented mining claims and the Bureau of Land Management has authority in emergency situations to cut and remove, and dispose of by sale, diseased or insect-infested timber growing on an unpatented mining claim located before July 23, 1955, where such timber constitutes a threat to the health of nearby timber growing on BLM-administered lands either within or without the exterior boundaries of the claim.

Emergency Salvage Operations On Unpatented Mining Claims, M-36636 (Apr. 5, 1962)

TORTS

GENERALLY

In the administrative determination of claims under the Federal Tort Claims Act the individual interests of a subrogor and subrogee for convenience are, sometimes, each referred to as an individual claim. However they are only interests in the same single claim. If the combined interests of subrogor and subrogee exceed the administrative jurisdictional limit of $2,500, the claim may not be considered administratively.

Claims of Wilbur B. Cassady and Mary A. Cassady, and Farmers Insurance Group, TA-235 (Ir.) (Nov. 7, 1962) 69 I.D. 193

TRESPASS

GENERALLY

A succession of statements which is inconsistent and inconclusive with respect to the finding of a bearing tree or trees which determined the location of a quarter section corner is not acceptable evidence which will permit the relocation of a corner; reliance upon a location assumed from unacceptable evidence of the location of a quarter section corner cannot protect the one who relies from the consequences of trespass.

Vern Johnston Logging Company, A-28760 (Aug. 8, 1962)

The grazing of sheep in an area of intermingled unfenced public and private lands at a time not permitted by the license issued to a sheep owner constitutes trespass on the public lands for which he is answerable in damages.

Nick Chournos, A-29040 (Nov. 6, 1962)

MEASURE OF DAMAGES

The presence of grazing animals on the federal range before the commencement of the licensed period or in greater numbers than the license allows constitutes trespass for which the licensee is responsible in damages computed on the basis of the reasonable value of the forage consumed in trespass.

Vaughn Stringer, Stringer and Fine, Fine Sheep Company, A-28859 (May 18, 1962)

In assessing damages for a timber trespass in the State of Oregon, it is proper to require the trespasser to pay three times the value of the timber cut from the land, although upon a showing that the trespasser had probable cause to believe that the timber which he cut was his own, the Bureau may accept double damages.

Vern Johnston Logging Company, A-28760 (Aug. 8, 1962)

VETERANS' PREFERENCE

A certificate of honorable discharge from the armed services of the United States which shows the date of discharge but does not show the date of entry into active service and does not show the period of military service is not, by itself, evidence that the veteran is qualified under the act of September 27, 1944, as amended, for a preference right of entry under the homestead or desert land laws, or Small Tract Act on lands restored from withdrawal, as the preference was granted only to honorably discharged veterans of World War II and the Korean Conflict who served for at least 90 days, or certain other veterans.

Where a public land order restoring land to entry under the public land laws provided for a 90-day period during which veterans might file applications for preference right entry under the act of September 27, 1944, as amended, and, during the period, two conflicting applications were filed, neither of which complied with the departmental regulation for showing that the applicant was entitled to veterans' preference entry, it was not erroneous to regard the applications, at the end of the 90-day preference period, as simultaneously filed non-preference applications, as provided by the order restoring the land to entry, and to determine priority by a drawing, even though, after the drawing, both applicants submitted evidence tending to show that

VETERANS' PREFERENCE--Continued

they were qualified veterans' preference applicants.

Kenneth R. Johnston, A-28886 (Aug. 1, 1962)

WATER AND WATER RIGHTS

GENERALLY

Where a determination has been made under section 40 of the Mineral Leasing Act that water struck while drilling for oil under an oil and gas lease is not presently valuable and usable at a reasonable cost and where additional information is submitted tending to show otherwise, the case will be remanded for a reconsideration of the determination.

When water struck while drilling for oil under an oil and gas lease issued pursuant to the Mineral Leasing Act is determined to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, the land on which the well is located will be reserved as a water hole and the well operated or leased to accomplish the purposes of section 40 of the Mineral Leasing Act.

When water struck while drilling for oil under an oil and gas lease issued pursuant to the Mineral Leasing Act is determined not to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, the well is to be plugged and abandoned by the oil and gas lessee.

Otis A. Roberts, A-29020 (June 12, 1962) 69 I.D.91

Land containing a spring which furnishes enough water for general use for watering purposes, although probably not of vital significance for stock watering, is properly determined to be withdrawn by the Executive Order of April 17, 1926, as a public water reserve and to be therefore unavailable for disposal under the Small Tract Act.

Frank Rauzi et al., A-28602 (Aug. 15, 1962)

WILDLIFE REFUGES AND PROJECTS

The Secretary has discretionary authority over issuing noncompetitive oil and gas leases and he may exercise this authority in a formal manner by promulgating a regulation closing a large area of public land, such as part of the Kenai National Moose Range, to oil and gas leasing.

George N. Keyston, Jr., et al., A-28350, A-28528 (Aug. 7, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-28937 (Sept. 25, 1962)

Where the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that lands in a wildlife refuge will be closed to oil and gas leasing, it is proper to reject oil and gas lease offers covering such land, even though the land applied for may have been open to oil and gas leasing when the offers were filed.

Duncan Miller, A-29041 (Nov. 7, 1962)

WITHDRAWALS AND RESERVATIONS

GENERALLY

An offer to lease lands lying within the part of the Kenai National Moose Range closed to oil and gas leasing by the Secretary's order of July 24, 1958, is properly rejected.

Doris L. Ervin, Executrix of the Estate of E. Wells Ervin, Deceased, A-28330 (July 11, 1962)

The withdrawal of all of a fractional township is effective as to both surveyed and unsurveyed land within the designated township.

Atherton S. Burlingham and Hilda S. Burlingham, A-29029 (Aug. 6, 1962)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Public land which contains hot springs not necessarily containing water possessing curative properties is withdrawn from disposition under the public land laws by Executive Order No. 5389 so that an application for public sale of such land is properly rejected.

Carl and Alvina Kidman, A-28898 (Aug. 8, 1962)

Land containing a spring which furnishes enough water for general use for watering purposes, although probably not of vital significance for stock watering, is properly determined to be withdrawn by the Executive Order of April 17, 1926, as a public water reserve and to be therefore unavailable for disposal under the Small Tract Act.

Frank Rauzi et al., A-28602 (Aug. 15, 1962)

Mining claims located on lands within a national forest after they have been appropriated by the United States for a public purpose are null and void ab initio; however, where the record is not clear as to the extent of the appropriation, which depends on the extent of the improvements and actual use and occupancy of the land by the Government, the factual issue should be resolved by a hearing.

Whether mining claimants have any valid property rights to unappropriated lands which are withdrawn for the purposes of a Federal agency subsequent to the filing of their mining locations depends upon whether the claims were perfected by a discovery thereon of a valuable mineral deposit prior to the segregative date of the withdrawal, which is the date that the receipt of the application for the withdrawal by the agency is noted upon the appropriate records of this Department.

A. J. Katches & Howard M. Brickel D/B/A Mid-Continent Exploration Co., A-29079 (Dec. 4, 1962)

EFFECT OF

Public land appropriated as a materials site to be used in federally-aided state highway construction is not subject to entry under the desert land law and an application for desert land entry on such land is properly rejected.

Lorene May Johnson et al., A-28714 (July 27, 1962)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Land subject to a second form withdrawal for reclamation purposes is not available for public sale so that a public sale application for such land is properly rejected for this reason.

Atherton S. Burlingham and Hilda S. Burlingham, A-29029 (Aug. 6, 1962)

RECLAMATION WITHDRAWALS

Public land subject to reclamation withdrawal cannot be sold at public sale and sale applications filed while the withdrawal remains in force are properly rejected.

Consumers Agency, Inc., A-28899 (Aug. 3, 1962)

Land subject to a second form withdrawal for reclamation purposes is not available for public sale so that a public sale application for such land is properly rejected for this reason.

Atherton S. Burlingham and Hilda S. Burlingham, A-29029 (Aug. 6, 1962)

Vacant unentered public land within an irrigation district which has been designated under the Smith Act (act of August 11, 1916) may thereafter be included in a reclamation withdrawal, and when so withdrawn the land is not subject to entry under the Desert Land Act.

Elizabeth Holmes MacDonald, Hugh John MacDonald, A-27711 (Oct. 30, 1962) 69 I. D. 181

REVOCATION AND RESTORATION

Where a public land order restoring land to entry under the public land laws provided for a 90-day period during which veterans might file applications for preference right entry under the act of September 27, 1944, as amended, and, during the period.

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

two conflicting applications were filed, neither of which complied with the departmental regulation for showing that the applicant was entitled to veterans' preference entry, it was not erroneous to regard the applications, at the end of the 90-day preference period, as simultaneously filed non-preference applications, as provided by the order restoring the land to entry, and to determine priority by a drawing, even though, after the drawing, both applicants submitted evidence tending to show that they were qualified veterans' preference applicants.

Kenneth R. Johnston, A-28886 (Aug. 1, 1962)

Where a withdrawal of land is revoked but the order of revocation provides that the land shall be subject only to small tract application upon issuance of an order of classification and such an order is issued, an application for a forest lieu selection of the land is properly rejected.

Donald J. Hodge et al., A-29045 (Oct. 22, 1962)

WITHDRAWALS AND RESERVATIONS--Continued

STOCK-DRIVEWAY WITHDRAWALS

A stock-driveway withdrawal removes the land from disposal so that a private exchange application for such land is properly rejected even though the driveway may no longer be used.

R. O. Sewell, A-28908 (July 30, 1962)

WORDS AND PHRASES

"Surrounding land", as used in a departmental regulation requiring that noncompetitive oil and gas lease offers include at least 640 acres unless a lesser acreage sought for leasing is surrounded by land not available for leasing, is properly construed as referring to encircling land which adjoins the land sought for leasing along common boundary lines but not to cornering land.

Duncan Miller, A-29057 (Nov. 20, 1962)

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